PORTUGUESE LAW AND ADMINISTRATION IN MOZAMBIQUE AND THEIR EFFECT ON THE CUSTOMARY LAND LAWS OF THREE TRIBES OF THE LAKE NYASA REGION

being a thesis presented for the Degree of Doctor of Philosophy

- by -

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ABSTRACT

The study that follows has two purposes. The first is to show how the present statutory land law in Mozambique evolved out of previous experiences in other parts of the Portuguese world: in what way the perpetual leaseholds which now constitute the main form of European land tenure closely resemble the former prazos; how the prazos can be traced back to an agrarian contract known to mediaeval Portugal and indeed to ancient Greece and Rome; and, finally, how the feudal system of granting powers of sovereignty to certain noblemen (donatários), practised since the early 15th Century in the Portuguese islands of the Atlantic and, later, in Brazil and Angola, contributed to the prazo system.

In the second place this study is concerned with an analysis of the impact produced by Portuguese law and administration on the customary land laws of three tribes of the north of Mozambique. For reasons discussed throughout the work and summarised in the final chapter, changes produced on customary land law were only minimal.

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PREFACE

It appeared particularly important that a coherent picture of Portuguese colonial policy as it applied in Mozambique (especially with reference to land law) emerged; interconnections were seen as more important than details and the latter were described only when considered indispensable to a good understanding of the subject. It is hoped that, by so doing, the forest remains perceptible, even if the trees are not.

It was also realised that a diachronic approach was as necessary to this study as a synchronic one. Phenomena have to be explained in the light of their history, as well as integrated into their contemporary cultural setting. The result of the juxtaposition of these two approaches in this thesis can be compared to the work of a film cameraman who keeps his camera on the move and stops occasionally over a particularly interesting scene.

Of necessity, this study is inter-disciplinary. Its author had to be concerned with history and politics, as much as with law and anthropology. Being only a lawyer and an African lawyer, her work will necessarily meet with the criticisms of specialists in those fields which are not normally hers.

To some, the whole basic approach to the central problem of the thesis may appear wrong. If one is supposed to be dealing with the effects of European occupation on a particular type of African custom, why not start off by describing the latter in the first place and <u>then</u> discuss the changes produced? This obvious criticism is, in my view, misplaced just because not enough information is available concerning the African peoples of South-east Africa in the late 15th Century. One has to observe African customs <u>now</u> and note that they

conform to what is generally agreed is customary, traditional law. Having decided that this is so, one asks oneself why. The subsequent work amounts to no more than to substantiate an a priori belief. However objectionable to pure scientists, I see no other way of dealing with what is basically a problem of lack of information concerning the inhabitants of Africa almost five hundred years ago.

Sources of various kinds were used in this work. Where historic information was sought, only published material, available either in this country, in Portugal or in Portuguese East Africa, was relied upon; no attempt was made at pursuing original historic research. On the other hand, all efforts were made to obtain unpublished information on present conditions in the areas of Mozambique studied for the first time in the present work. Administrative unpublished reports were looked into whenever available, missionaries and other persons with first-hand knowledge of the areas concerned were interviewed, a few unpublished works were found; information on customary law was obtained almost exclusively from African elders and chiefs.

A slight change was introduced in the normal method of quoting in that no abbreviations were used. This, it is hoped, will prove helpful in the case of quotations in a foreign language. For the same reason, references to articles, etc. provided in footnotes were repeated more often than usual, being avoided only within the same chapter.

I am greatly indebted to the Central Research Fund, University of London, which sponsored my field work in Africa. Financial help was also given by the Instituto de Investigação Científica de Moçambique which published my essay on some of the points dealt with in this thesis. In particular I would like to thank the many Portuguese who, by an hospitality which has become traditional, made my field

work so much easier and more pleasant; and all those African informants who, in areas of impassable roads and most scarce transport, took the trouble of meeting me at great personal inconvenience.

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PART I

THE LATE 15TH AND 16TH CENTURIES IN SOUTH-EAST AFRICA. PREVIOUS EXPERIMENTS IN PORTUGUESE COLONIAL ADMINISTRATION

It was considered that the first part of this thesis should, to begin with, concern itself with the nature of the Portuguese occupation of Mozambique in its early days. As such occupation was mainly characterised by its orientation towards the pursuit of trade, a description of the latter was also considered necessary. In the course of the 16th Century Portuguese settlers spread into the interior from the coastal areas which they had occupied since the first years of the century; rudimentary forms of administration evolved in those areas and were incorporated into the general system and reference will also be made in Chapter I to this growth and development.

The second chapter deals with the nature of the contacts which took place between the Portuguese and the Africans, although relations between the two groups were at that stage superficial and in any case difficult to evaluate on the basis of the scanty existing material.

Agrarian policies as such were not the concern of the legislator in those days. They were not required by circumstances and it was not until the 17th Century that laws were passed concerning the occupation of the land. But if one cannot speak of the land policy at this stage, one can at the outset state that, when it did develop in South-East Africa, it was the result of experiments already tried in other Portuguese overseas possessions and, to some extent, in Portugal herself. The prazo system (to be discussed in detail in Part II of this thesis), generally considered an interesting experiment in the history of colonisation, was in fact the child of well-known and reputable parents. This legal and historical background to what came to be the main form of European occupation of land in Mozambique is also to be described in Part I.

CHAPTER I

PORTUGUESE SOUTH-EAST AFRICA IN THE 16TH CENTURY

a) GENERAL - One may start by putting in its proper perspective the geographical area referred to - namely, by underlining that the Portuguese did not in the beginning of the 16th Century occupy any stretch of territory in South-East Africa but merely a number of very restricted zones around ports, all over the African coast. It may also be recalled that such dots on a map were only a small part of the total number of points spread over the African and Asian continents as far as the Far East - a panoramic view of which will help to explain why the fate of the territory of South-East Africa was so closely linked to that of the settlements in the East, from which it did not essentially differ.

In the first years of the 16th Century it was considered by Portugal that it was to the advantage of her eastern possessions that a resident ruler should govern all the lands conquered in those remote areas, instead of having them depend on the king of Portugal. India was thus made a 'vice-royalty' (vice-reinado)and her viceroy was granted wide powers and jurisdiction over all the territories between the Cape of Good Hope and India in which Portuguese presence could at all be said to exist.

The first viceroy was specifically instructed to build fortresses on the coast of Africa, starting with Sofala and Kilwa, and this he proceeded to do in the year of 1505. These fortresses subsequently fell several times into the hands of their previous Arab rulers, but for the moment it suffices to say that the viceroy achieved his aim for the time being. He also set about expelling from the Indian Ocean Arabs, Persians, Turks and Egyptians who might endanger the monopoly of exports of Indian spices and products of the coast of Africa which the Portuguese were already carrying out or intended to develop. Subsequent viceroys extended the Portuguese

sphere of influence to Goa, Malacca, Hormuz and, later, Sumatra and Ceylon, areas which are beyond the scope of this work.

For over half a century all went well and the Portuguese record of expansion was impressive. A succession of trading posts and fortresses was established along the eastern coast of Africa, local resistance was repeatedly fought and overcome, areas of no immediate interest were surveyed and their potentialities noted and penetration into the interior began. At the same time, in the Orient, Portugal continued to expand northwards and eastwards, whilst geographical data were collected and maps prepared which showed remarkable knowledge of African and Oriental countries.

Such a vast empire, comprising different races, could not be defended without difficulty, and by the middle of the 16th Century a number of areas were already devastated by war. Fighting had broken out in Malacca, the Molucas, Ceylon, Malabar and Hormuz. Inevitably, Portuguese power was being sapped by the strenuous effort of suppressing widespread rebellion over a number of years.

The situation further deteriorated when, in the early 17th Century, French, Dutch and English pirates began to attack Portuguese ships. As these attacks became more and more frequent Portuguese captains were ordered to sail in fleets and never by themselves; in spite of these precautions and the protection afforded by a Portuguese fleet which escorted ships until they were out of the danger zone, many caravels were in fact lost and this too was a drain on the economy of the country.(1)

(1) For example, of the two fleets of 5 naus each which sailed for India in 1585 and 1586, only 4 naus returned to the kingdom, 6 being lost.

The constitution, in 1602, of the powerful Dutch East India Company had the gravest consequences for the Portuguese, who were repeatedly defeated by the Dutch, not only because the latter were more powerful in terms of capital and equipment but also perhaps because (as a result of her previous policies in the East) Portugal had failed to secure the support of local rulers and populations. In 1622 a peace was negotiated by which Portugal acknowledged the loss of all the lands taken from her [1] and made a heavy payment to her former enemy.

The loss by Portugal of Hormuz in 1622 and of Muscat in 1650 made her position a very precarious one vis-a-vis the Arabs as well. The iman of Oman achieved a number of victories on the eastern coast of Africa and during the 17th Century the Portuguese lost Mombasa, Zanzibar and Kilwa, as well as some Indian towns; and thus the territory on the eastern coast of Africa north of Cape Delgado ceased to be hers[2].

(b) TRADE - Reports received in the kingdom of Portugal during the 15th Century created the belief that in the hinterland of Sofala,[3] on the East African coast, lay gold mines which by far exceeded in importance those of Guinea [4]. The trade of gold was further said to be (as indeed it was) in the hands of 'Moors'[5] who used the port

(1) The United Provinces, on the other hand, gave up attempting to conquer Brazilian lands which they had occupied for some time.
(2) Some of these places were reconquered in 1725 but only for a short length of time.
(3) Sofala, according to legend, was the biblical Ophir, wherefrom the Queen of Sheba sent spices and gold to Solomon.
(4) In the last decade of the 15th Century Guinea was providing the Portuguese Crown with its most important source of revenue (J.L. Azevedo, Épocas de Portugal Económico, Lisbon 1947, p.169).
(5) The Portuguese, who had for centuries fought the Moors of North Africa and knew no other Arabs, called any Muslims 'Moors'.

of Sofala. The fact that national imagination had fed for many years on the wonders of Oriental riches, added to the fact that trade in the precious metal was the monopoly of traditional religious enemies, to a great extent accounts for the vivid interest generated in Portugal in that part of Africa. The Crown, religious orders and ambitious adventurers, all found the enterprise worth their while.

There can be little doubt that trade was in the early 16th Century the dominant factor in Portuguese-occupied South-East Africa and that it directly influenced the social and political life of the various communities. Fortresses, garrisons, men, were settled in those areas which were best suited to this particular purpose. Arabs travelling inland were fought and later tolerated because they were traders and their privileged position vis-à-vis ~~in~~ African populations could not be ignored. As the good will of African chiefs had to be secured if trade was to be carried out safely, ambassadors were repeatedly sent inland with presents and friendly messages (1) - a policy of appeasement, in sharp contrast with the ruthlessness which, more often than not, prevailed in relation to the Arabs (2).

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Gold and (to a lesser extent) ivory were the main items of trade. Spices, which played such an important role in trading with India, were not to be found in Africa and the sale of slaves

(1) A.Lobato, A Expansão Portuguesa em Moçambique de 1498 a 1530, Lisbon, 1960, vol. 1-2, p. 45.
(2) See, for example, the long war waged against the Arabs of Angoxe (A. Lobato, op. cit. vol. 1-2, pp. 119 et seq.)

to Brazil did not become significant until the end of the 17th Century.

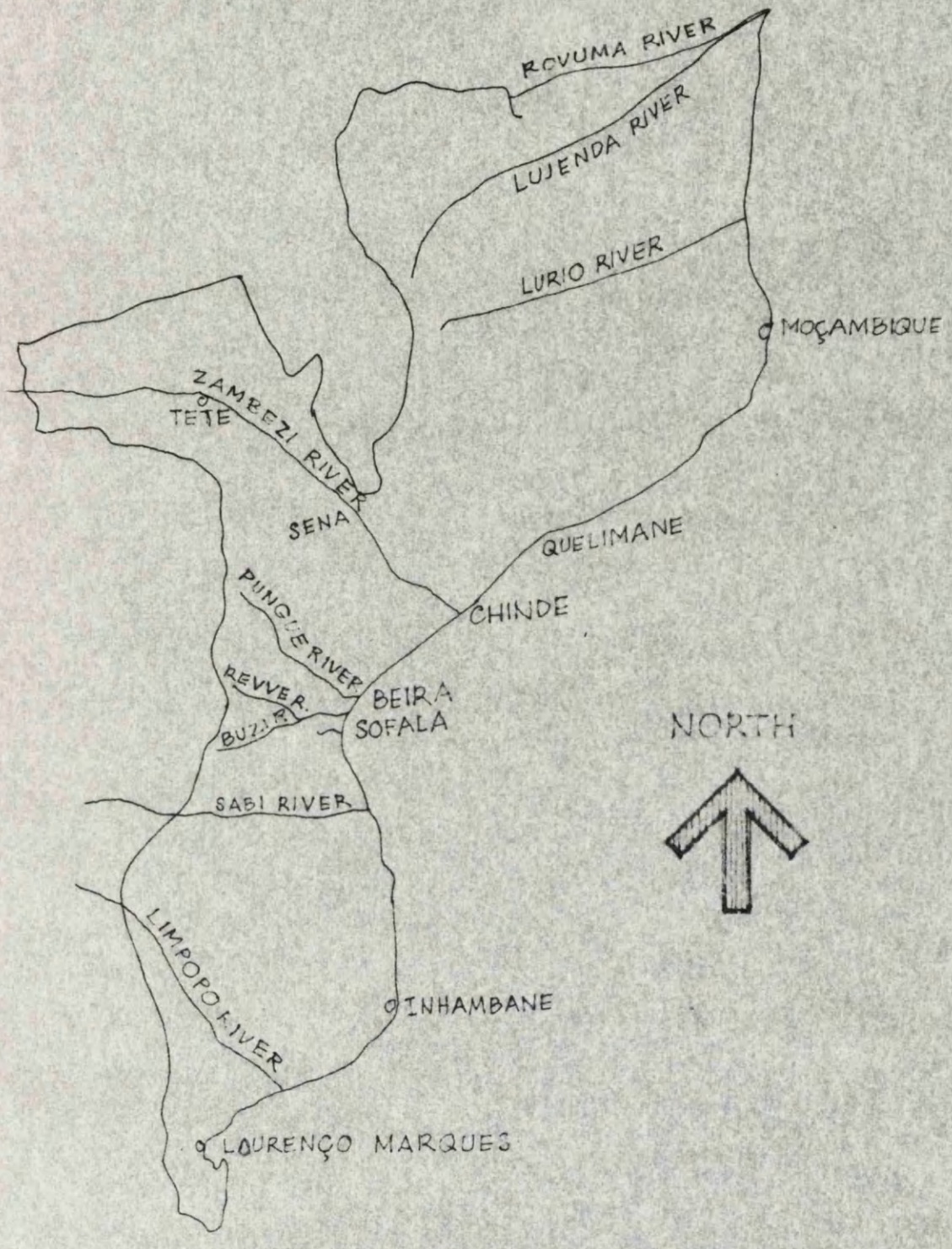
Trade took place mainly in the ports between Sofala and Zanzibar, although after 1544 Lourenço Marques and Inhambane in the South became centres of annual trade. In exchange for gold and ivory the Portuguese gave cloth of different kinds and beads from India.

Sofala was in the early 16th Century the main trading area but, according to contemporary authors, its commercial life could not be compared to that which had flourished under the Arabs. By the time of Portuguese arrival in East Africa gold had become relatively scarce, a fact attributed to the insecurity created by wars being waged in the interior;(1) secondly, gold was to be found in very small particles rather than in large pieces as in Guinea. A governor of Sofala, writing in 1513, complained that the revenue arising from trade in his area was insufficient to pay the expenses of the fortress and ships, a view endorsed by subsequent governors.

North of Sofala, in Moçambique island, there were more items for exchange (brought from India by the Portuguese caravels which stopped to renew their stocks of water and food) and trade was said to be lively at times in the island. Further north, in Kilwa, Mombasa, Mogadeshu, etc. trade with Africans was also carried out through the Captain of Malindi.

In the south, the Baia da Alagoa (now Lourenço Marques) did not become a trading place until a navigator, Lourenço Marques, visited it in 1544. From then on a Portuguese boat would sail there every year, attracted by abundant ivory; yet no factory was

(1) I.A. Diogo da Alcaçova in his letter to the King dated 20/11/1506 (Apud G. McCall Theal, Records of S.E. Africa, Capetown, 1964 (facsimile reprint of 1898 ed., vol.I,p.60).


ROVUMA RIVER
LUJENDA RIVER
LURIO RIVER
MOÇAMBIQUE
ZAMBEZI RIVER
TETE
SENA
QUELIMANE
CHINDE
PUNGUE RIVER
REVVER.
BUZI R.
BEIRA
SOFALA
NORTH
SABI RIVER
LIMPOPO RIVER
INHAMBANE
LOURENÇO MARQUES

built until the place had been endangered by the presence of the Dutch in the 17th Century. During the previous century business was done in a primitive way, traders building themselves provisional huts as they arrived and waiting for natives to get in touch with them. The same was true of Inhambane, where a boat was sent annually.

During the 16th Century even Sofala (the most important centre of trade with the hinterland) had restricted external trade, being visited no more frequently than once a year by the royal ship of trade, and by a few African canoes. Navigation was still a precarious activity, not least because of its dependence on favourable winds.

Trade in the coast, on the whole, passed from Arab into Portuguese hands as the blockade imposed on Arab navigation succeeded to a great extent. In the hinterland, however, the position was quite different. There the difficulty of isolating the Arabs was almost insuperable since they had access to the interior by using one of the many arms into which the Zambezi divides itself as it reaches the coast. All the Arabs of the northern settlements needed to do, and were in fact doing in order to trade with the hinterland, was to avoid Portuguese-controlled Sofala.

According to one historian, Portuguese authorities were fully aware of these facts and by 1530 a modus vivendi was reached according to which Arabs would buy Portuguese goods at Sofala factory and sell them inland(1). It was estimated that some ten thousand Arabs were at the time trading in the hinterland of Sofala, whereas the Portuguese did not exceed a few hundred in number.

(1) Lobato, op.cit. vol.II, p.23.

The Portuguese started to penetrate inland along the Sofala river in about 1530, and somewhat later along the Zambezi, side by side with the Arabs. By the middle of the 16th Century there were already some settlements in Tete and Sena of men in search of gold and ivory(1).

Both Sena and Tete, however, were far from the mines of the Monomotapa and this led the Portuguese to settle in intermediate areas as well, hoping to attract trade with neighbouring populations. Periodical markets (feiras) came into being - the most important of which were Massapa, Luanze and Bocutu - and eventually developed into permanent villages. Traders' employees were sometimes sent to native villages in search of gold and ivory, while on other occasions goods were taken to the feiras by Africans themselves. In the late 16th Century there were a number of feiras along the Sofala and Zambezi rivers in areas leading to the Monomotapa country, and such markets were no longer temporary.

In the ports they occupied the Portuguese established factories upon which ~~the~~ trade of a given area converged, and built fortresses to protect them. The capitães-mores (captain-majors) governed the fortresses and ran the factories, sometimes helped by factors, thus performing simultaneously the functions of military rulers, traders, administrators and adjudicators of cases.

The variety of goods exchanged increased gradually and by the end of the 16th century they comprised not only the original gold and ivory but a variety of other items such as amber, pearls, honey and slaves; if one considers the conditions of the time, one can say

(1) By the end of the 16th Century Sena had about 800 Christian inhabitants, of whom some 50 were Portuguese and the remainder Indians and Africans; Tete, too, had about 600 Christians, of whom 40 Portuguese (João dos Santos, Etiópia Oriental, Évora, 1608, I, II, 8, 52).

that trade was lively along much of the eastern coast of Africa. External markets for the African products were either Portugal or India as Brazil only became important in the 17th Century with the slave trade. Sofala was considered the richest of all capitanias, followed by Hormuz and Malacca, but it was a common complaint among viceroys of India that such profits as arose from trade only enriched the capitão-mor and others in the fortresses and caravels and did not find its way into the public treasury.

One last word might be added regarding the beneficiaries of the trading activity. In the first years of Portuguese occupation the system adopted was that of a monopoly, either in favour of the capitão-mor or of the government. When the monopoly was held by the capitão-mor of Sofala he was under the duty to pay either a rent or a percentage in all goods traded, as well as all the expenses of public administration. When trade was carried out by the State, the latter paid all ~~the~~ expenses and collected all revenues. The two systems alternated for many years as the government did not appear to be able to decide which was to its greatest advantage.

In 1593 a new experiment was introduced by which all Portuguese subjects were granted freedom to trade in gold. Customs posts were set up, firstly in Moçambique island, to which traders had to pay one-fifth of all their goods. In order to protect the capitães-mores this legislation only applied to trade in gold, and the captains maintained their monopoly over ivory, amber and other items which were free of duty. The system lasted for only two years and in 1595 a by-law once again provided for the monopoly of all trade to be in the hands of the captain of Sofala and Moçambique (as his title then was) who was bound to pay a certain amount of money to the Portuguese Crown as well as the expenses of the two fortresses. The idea of freedom of trade was thus abandoned for the time being and old methods put into practice once more.

c) PORTUGUESE SETTLEMENT AND JURISDICTION - In his first trip to the East, in 1498, Vasco da Gama was only concerned with reaching India and his activities in the ports he touched were consequently limited to acquiring information regarding his mission. But in a second voyage to India in 1502 Gama already established a factory on Moçambique island, a place soon to become of some importance as it was a refreshment station for Portuguese ships sailing to and from India.

One consequence of the Gama expedition was that the Sheikh of Kilwa became a subject and undertook to pay a tribute. Other Arab rulers of the African coast subsequently surrendered to the Portuguese (1505) either peacefully, as in the case of the Sheikh of Malindi or, more often, after fierce battles. The first viceroy of India, in pursuance of instructions given him to the effect that fortresses should be built on the eastern coast of Africa, had by 1505 caused the forts of Malindi, Kilwa and Sofala to be erected. This was the effective beginning of Portuguese occupation of the coast of South-East Africa, an occupation which was not to be carried inland until some thirty years had elapsed.

The Portuguese authorities in East Africa at the time, the capitães-mores (captain-majors), were appointed by India and were answerable to India; their territorial jurisdiction covered a number of centres in the littoral. The captain of Sofala had jurisdiction which extended from Sofala northwards to Cape Delgado and here his political influence ceased and that of the captain of Malindi started. It has been implied but can be stated expressly that such jurisdiction was not exercised over any continuous stretch of territory but only applied intermittently to such ports as the Portuguese occupied. This rudimentary kind of sovereignty could only be exercised in an itinerant way and for this purpose the captains disposed of ships with which to patrol the coast.

On the captain of Malindi (capitão da costa de Malinde) depended a number of islands in the coast - Monfia, Zanzibar, Mombasa, Lamu, Pate and others of lesser importance. The capitão da costa had a

factor (feitor) in each of the main islands; the powers of the feitores were those arising from their functions as traders, collectors of tributes and administrators of the property of the fortresses.

When the fortress of Kilwa was demolished and the island abandoned by the Portuguese in 1512, the importance of the capitania of Sofala increased - until the time when it was superseded by Mozambique island, to which it became subordinate (1). By 1609 the captain of Mozambique held the somewhat impressive title of 'Captain of Mozambique, Sofala, Cuama Rivers and Monomotapa'. When in 1752 the East African settlements ceased to be dependent on India, he became captain-general (capitão-general).

As to jurisdiction over persons, during the period under consideration the capitães-mores held unlimited jurisdiction over all Portuguese persons and from their sentences no appeals lay. The captains of the feiras, in the interior, had jurisdiction over the Portuguese residing there but from their decisions appeals could be presented to the capitão-mor of the area. The first Portuguese authority of Sena, the capitão do rio (captain of the river), was directly connected with the business of trading, his main job being to secure that goods travelled safely along the Zambezi (2).

(1) Until 1558 no fortress had been built in Mozambique and the village only had a factor, subordinate to the captain of Sofala. After 1558 it became the practice that the captain of Sofala would spend six months in Sofala and the remaining half of the year in Mozambique. By the end of the 16th century the captain was residing permanently in Mozambique and appointed (special powers being given for this effect by the viceroy) the captain of Sofala.
(2) A. Lobato, Evolução administrativa e económica de Moçambique 1752-1763, Lisbon, 1957 p.170.

The position as far as Arabs were concerned need not be described here but it may be mentioned that they were governed by their own laws and rulers. Apart from being acceptable to their own subjects sheikhs had to obtain Portuguese placet. At this level Portuguese presence certainly made itself felt; but it is quite unthinkable that in the field of private law the Arabs would ever resort to Portuguese justice and no occurrence of this appears to have been reported.

With regard to Africans, there is no doubt that the Portuguese did not attempt, at the early stage now under discussion, to dominate the African tribes. The local chiefs with whom they made treaties were recognised as sovereign. One of the most enlightened missionaries of the time, the Dominican João dos Santos, mentions that when the Portuguese visited Quiteve they walked barefoot, lay on the floor in the customary manner without looking at the King and clapped hands every few words, as respectful subjects were bound to do(1).

The fact, too, that the Portuguese gave annual presents to Monomotapa and to Quiteve proves that there was no question of these kings being subordinate to the Portuguese Crown, The payment made - the curva as it was called - was the quid pro quo, which enabled Portuguese traders to travel and trade safely throughout

(1) Op.cit. I, I, VII, 12.

the native kingdoms[1]. Many instances could be mentioned to the effect that whenever the Portuguese authorities omitted to make their payments, roads were closed, traders robbed and beaten and not seldom murdered.

Trade agreements were thus the rule in the early days of Portuguese penetration into the interior. According to one author, the Jesuit Monclaros who wrote in 1570, the Portuguese were not even interested, for some time, in exploring the gold mines themselves, but only in trading with those who did: 'The Monomotapa gave mines to the Portuguese who were there; but because the trade of cloth was more important, they did not take them'[2].

By the end of the 16th Century the pattern of settlement had considerably changed as a result of Portuguese expansion in the Zambezi area. Fortresses had been built in Sena and Tete and the feiras were a permanent feature of the country.

(1) Payment of the curva was elaborate. In the case of Quiteve, each year four ambassadors were sent from his kingdom to Sofala to collect the curva. Arrived at about two miles from Sofala, the ambassadors sent a message to the captain, who would have them welcomed by the local sheikh, as well as some Portuguese. The remainder of the Portuguese and the captain waited at the fortress. The ambassadors stayed with the Arabs as long as they remained in Sofala (usually a week) and were entertained by them.

In the case of the Monomotapa the curva was collected in a different way. The African king asked the captain of Massapa to choose a trustworthy Portuguese who, together with African ambassadors, went to Sena, collected the payment and delivered it at the Monomotapa's residence (João dos Santos, op.cit.,I,II,9,54).

(2) A. Lobato, ~~Ex~~ Evolução···,p.171. The Jesuit was looking backwards; at the time he wrote an attempt had just been made by the Portuguese government to conquer the gold mines of the Monomotapa but, on seeing them, disappointment took place of hope and the scheme was abandoned for some years. The silver mines of Chicoa were then to occupy men's minds in the way the gold mines had, but these too proved illusory and attempts to find them were abandoned after two fruitless decades.

The captain of Sofala was no longer the sole authority in his area as there were captains in Sena and Tete; in the feira of Massapa there was a capitão das portas (captain of the doors), thus called because his area could be compared to a doorway which had to be crossed by all those who, travelling from Tete or Sena, were seeking the Monomotapa. The captain's permission had to be obtained and a tribute, collected by the captain, had to be paid to the Monomotapa(1). What is more, a new relationship between Europeans and Africans was emerging: the captain of the doors, besides having jurisdiction over Europeans, had unlimited jurisdiction over Africans, 'such jurisdiction having been given to him by the Monomotapa'(2).

Similarly, by the end of the 16th Century the Portuguese were exercising jurisdiction, ceded to them by the Monomotapa, over eleven villages in the area surrounding Tete. Of this more will be said in the next chapter.

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(1) One piece of cloth in every 20 transacted.
(2) J. dos Santos, op.cit., I,II,9,54.

CHAPTER II

THE LOCAL POPULATIONS

Since information concerning the native peoples of South-East Africa during the 16th Century is fragmentary and of uneven value, it has been felt better to organise such material as is available in separate groups (corresponding to the different aspects of the knowledge which has been handed on to us) rather than attempt to integrate it into a unified whole.

First we shall summarise what is known about the peoples who constitute the object of this study; but in this case the material available is scantier than ever and in any event not very important because contact between such peoples and the Portuguese can hardly be said to have taken place in the 16th Century. Secondly, a brief summary will indicate the kind of knowledge contemporary writers had about Africans and about the pattern of tribal distribution in the territory which is now Mozambique. A final part will deal, no longer with the African peoples, but with the nature of the contacts between them and the European invaders; here a much more substantial body of information is available but, of necessity, it only relates to the area which the Portuguese were occupying at the time and not to that with which this study is supposed to be dealing (and was not so occupied). Reference will also be made to the declining status of the Arabs of S.E. Africa, in those days the more obvious victims of Portuguese expansionism.

There is clearly no room at this stage to speak of the Nguni people of Southern Africa as they had not yet left their homeland in Zululand and had not come into contact with the Portuguese at all. Migrations resulting from struggle for political power between leading men of the tribe did not start until the first quarter of the 19th

Century and the particular group of Nguni [1] with which this study is concerned did not settle in the present district of Angónia in Portuguese East Africa until about 1860 [2].

Nor did the Yao people come under Portuguese influence, let alone rule, at this stage. Portuguese literature of the time does not mention them, although it refers to their neighbours, the Makua of the coast, with whom some trade was carried out. Reference by authors [3] to a certain Mwenemudzi [4] (literally the owner of the village) point out that his kingdom was vast and his power considerable, but provide no further details. Such description is in any case more likely to refer to the Maravi - known later to have been the rulers and occupiers of an immense area North of the Zambezi - or to the Nyamwezi of Tanzania [5] than to the Yao, among whom no tradition exists of having been the rulers of an empire.

Of the tribes dealt with in this study one did in fact come into contact with the Portuguese in the 16th Century. These were the Zimba (or Azimba or Muzimba), now generally identified with the Cewa [6]. We learn from contemporary writers [7] that the Zimba occupied the area north of Sena and that they came into conflict with the Portuguese in 1592 when the latter supported a chief

(1) The tribal group who left South Africa later became known as Ngoni.
(2) Father José B. Gonçalves, A. Angónia e os seus angones, 1958, unpublished.
(3) Inter alia João de Barros, Ásia, dec.II, p. 182.
(4) Variously spelt.
(5) A. Paiva e Pona, Dos Primeiros Trabalhos dos Portugueses no Monomotapa, Lisboa, 1892, p.6; Ayres d'Ornellas, Raças e Línguas Indígenas de Mocambique, L. Marques, 1905, p.31.
(6) A. Rita-Ferreira, 'Os Azimba' - Boletim da Socied. de Estudos de Moçambique, 84-5, 1954, p.99.
(7) I.a.M.de Faria e Sousa, Ásia Portuguesa, apud G.M. Theal, Records, vol I, pp.35 et seq.

with whom they had friendly relations against a Muzimba ruler. Over a hundred Portuguese and half-castes, including the captains of Sena and Tete, were killed by the Zimba; and the large military expedition sent a year later was forced to withdraw to Sena[1]. No friendly relations, such as those originating in common trade, appear to have prevailed between the Portuguese and the Zimba in those days.

We also learn that in the late 16th Century an expansionist movement started in one of the Zimba chiefdoms when a ruler with only a reduced number of subjects set about to fight and incorporate other tribes into his own. Departing from the Sena area he moved eastwards to the coast and then north. The wandering warriors reached Kilwa, which they conquered, Mombasa and Malindi, having devastated such an immense area that 'it appeared that it was a punishment God wanted to give to this kaffirland'. Only in Malindi were they defeated by the Portuguese, helped by allied Africans; some hundred Azimba escaped massacre and returned to their homeland near Sena.

Early Portuguese travellers made some reference to the natives they met but their comments were necessarily brief, as were their encounters with the African population.

As Vasco da Gama went round the Cape of Good Hope in 1498 he met in St. Helena and Bay of São Braz [2] short men, yellowish in colour, who wore skins and owned much cattle and stock. Further north, in the area now known as Inhambane, men and women were found to be taller and darker. To both groups the Portuguese called

(1) J. Dos Santos, op.cit. I, II, 19, 68.
(2) Now Mossel Bay.

cafres (kaffirs), an Arab term applied to infidels.

These descriptions, contained in the Roteiro[1] of the trip by Gama, sketchy as they are, suffice to identify, as subsequent authors have done[2], the two aborigenal races of southern Africa: the Bushmen and the Hottentots who, at the time of Portuguese arrival, had been pushed south by the invasion of a third group, the Bantu. The Dominican João dos Santos in his Ethiopia Oriental, dated 1608, described the Bushmen as a nomad tribe wandering in the area south of the Zambezi and recognising no form of government but mere kinship ties; they were referred to by early writers as the Waq-waq, an onomatopeic term derived from their primitive language[3]. The Hottentots, on the other hand, living further south, were a pastoral people organised in tribes and acknowledging the authority of chiefs.

It is about the invading Bantu and their subdivisions[4] that Portuguese writers of the 16th Century had more to say. Three main groups were observed: the Mocaranga, the Botonga and the Makua, and this ethnic division of Mozambique, while not exhausting its tribal pattern, has been considered almost to the present day to constitute a basic and adequate classification of the Bantu peoples of the colony[5].

(1) Roteiro da viagem de Vasco da Gama, Porto, 1945 pp.7 et seq.
(2) Ayres d'Ornellas, op.cit., pp.5 et seq.; G.M. Theal, The Portuguese in South Africa, C. Town, Johannesburg, P. Elizabeth, 1896, pp.3 et seq.
(3) E. Axelson, South-East Africa 1488-1530, Lond.,N.York, Toronto, 1940 p.3.
(4)The term 'Bantu'had not yet been coined but terms referring to its sub-divisions were used by early Portuguese in much the same way as they are now, i.e., they were applied to tribes known to the present day and settled in very much the same areas as they now occupy.
(5) As late as 1905 Ayres d'Ornellas (op.cit.p.40) only had one main group to add, the 'Yao-Ngoni group', incidentally an unfortunate addition as Yao and Ngoni have as little in common as is possible for two Bantu tribes.

The earliest information given by a Portuguese writer on the Mocaranga [1] dates from a letter written in 1506 [2] to the King of Portugal. The kingdom inhabited by the Mocaranga, it said, was called Vealanga and was ruled by the Monomotapa, an emperor having under him a number of smaller kings and an immense area of territory[3]. The Monomotapa's capital was called Zimbahoe and lay inland 'from 15 to 20 day's march from the port of Sofala'. It was an important centre to which gold was taken from all parts of the empire, eventually finding its way to Sofala in the coast. The monopoly of such trade had for centuries been in Arab hands and Sofala, as well as most other centres in the eastern coast of Africa, was ruled by an Arab sheikh.

According to João dos Santos, the missionary often quoted, at the time of the arrival of the Portuguese the empire of the Monomotapa had already been divided between the emperor and his sons, the emperor keeping the largest kingdom for himself. In this way the kingdoms of Sedanda, Quiteve and Manica, formerly part of the Monomotapa, had become independent. Villages of Velanga are described by the friar as being some small and others very large with as many as two or three thousand inhabitants. [4] More will be said later in this chapter about relations between the Mocaranga and the Portuguese, a subject of greater relevance to this study than the description of Mocaranga society itself.

(1) Arab sources are likely to be most valuable in this respect.
(2) By Diogo da Alcáçova (quoted by several authors; in English, by Theal, Records, vol.I, p.57).
(3) It extended between 41° and 56° longitude east, and 14° and 25° latitude south (Paiva e Pona, op.cit.,p.5).
(4) The Dominican's work is remarkable by any standards. He carefully and intelligently noted most aspects of the material culture of theMocaranga, their social life and organisation and religious beliefs.

The second group of Bantu described by early Portuguese writers were the Botonga, who occupied the territory south of that dominated by the Mocaranga kings. Letters, dated 1560, written by two Jesuit priests, André Fernandes and Gonçala da Silveira [1], who set about to convert the tribes of the area of Inhambane, give some indication as to the mode of life of the people.

Father Fernandes found that the Botonga had been strongly influenced by the Arabs and were ruled by chiefs called sheikhs. Rulers as well as people he described as being of a peaceful disposition. Shortly after the arrival of the two Jesuits the African king was baptised with the Portuguese name of Constantino; the Queen, many noblemen and about 400 commoners were also baptised. Few months later Gonçalo da Silveira moved into Vealanga and converted the Monomotapa [2] to whom the name and title of Dom Sebastião were given. However, in both instances conversion to Christianity proved to be more apparent than real. In 1561 Gonçala da Silveira was murdered on the instructions of the Monomotapa [3] and Father Fernandes hastily left the Botonga country, having lost favour with the local king. Contrary to what happened in the case of the Mocaranga, contacts between the Botonga and the Portuguese remained superficial for centuries, as practically no penetration

(1)Collected and published by A.P. Paiva e Pona, op.cit. Also published, with English translations, by G.M. Theal: Records - vol.II, pp.54 - 153.

(2) The initiative had the support of the viceroy of India: presents were given and letters handed to the two African kings in question in his name.

(3)The Monomotapa was persuaded by the Arabs, whose trade monopoly was being seriously jeopardised, that the Portuguese had come to spy on conditions of the country with a view to invading it later. The death of Dom Gonçalo da Silveira was so deeply felt that the most distinguished of Portuguese poets describes the event in his Lusíadas (canto X, est.93).

into the interior took place in the area and trade of Portuguese cloth for local ivory was restricted to coastal centres and to a particular time of the year. Father Fernandes does not comment on the organisation of the people among whom he lived and merely indicates that they depended on agriculture for their livelihood.

Lastly, The Makua are described by the same missionary as inhabiting the area north of the Zambezi river near the coast and as being the most primitive and war-like of the three groups, an opinion which is still widely held. These people, who we now know to include a variety of related tribes - Makua, Makonde, Yao, Lomwe - were said by the missionary to lack powerful kings and to be organised in independent chiefdoms, a pertinent comment true to the present day(1).

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Before describing the kind of relations which prevailed between the Portuguese and the Africans in the 16th Century, it will be of interest to refer to official thought on the matter, as one can infer it from the available ordinances of that century. A key document is the Ordinance (Regimento) of March 5th, 1505, prepared by King Manuel for the first viceroy of India, Dom Francisco de Almeida. The same policy, followed in the East, of siding with the local populations against their Muslim rulers is apparent in the case of the Regimento for East Africa:

(1) Accounts of the wreck of ships occurring throughout the 16th Century provide some information as to the mode of life of S.E. African tribes; but such accounts are the outcome of short stays in the country, often in the most appalling physical and moral conditions when objectively ought not to be expected, and in any case only refer to coastal areas south of Sofala.

> 'You will capture at once all the Moor traders you meet, from whatever part of the world, and all the gold and goods they carry with them, and this you will do with as much zeal as you must when doing your king's service. You shall capture the said Moors but to the natives of the land you will do no harm, either to their persons or property, because we want everything to be kept for them; you will tell them that we have ordered the Moors to be captured and their possessions confiscated because they are the enemies of our holy faith and we are carrying against them a continuous war; but to them (the natives) we shall always be pleased to do good and be generous and we intend to treat them well and have them as if they belonged to us, because such is the place we give to them. And (tell them) not to take offence on anything because they shall always be well-treated and have (the king's) favour'(1).

This was the general tone during King Manuel's reign which lasted from the years 1495 to 1521(2). The instructions to what one might call the first Resident to the kingdom of Congo, Simão da Silva, again stressed that the African King was to be recognised as fully sovereign(3). A genuine effort to assimilate Africans culturally - Portuguese way of life was to be copied in every detail in the Congo - is apparent, while there is no evidence that such assimilation was to be followed by political domination. In India, too, viceroy Afonso de Albuquerque started to implement his policy of mixed marriages; usages and customs were respected and it was not until after the death of King Manuel that intolerance,

(1) Apud A. Lobato, A expansão portuguesa em Mocambique de 1498 a 1530, Lisbon, 1954, vol.I, p.81.For the original in Port., see Appendix A.
(2) Although, as Axelson notes, the incident between Portuguese and Africans in which the first viceroy lost his life (1510) shows that the king's orders were not always scrupulously observed (S.E. Africa 1488-1530, Lond.,N.York, Tor.,1940, p.116).
(3) A. SilvaRego, Portuguese Ordinances in the 16th Century, Johannesburg, 1959,pp.45 et seq.

religious and otherwise, set in.[1]

In 1500 it had been decided that war against the local king was not legitimate if the grounds on which it was being waged were simply religious; he had to oppose trade as well, such opposition being viewed as striking at the very root of societies and fundamental relations between men[2].

In Brazil, too, it was considered that since Christianisation was the aim of Portuguese expansion, Europeans were not to oppress natives; the latter were to be attracted and not alienated[3].

The Regimento of Sofala dated 1530 reiterated the view that relations with natives were to be entirely peaceful; particular importance was attached to the fact that full understanding between the Portuguese and the Africans could only be reached if the behaviour of the Portuguese were fair and above reproach[4]. Similarly, the Regimento given to Manuel Pacheco and Baltazar de Castro in 1520 stressed the importance of approaching the West African kings in the proper manner: native policy ought to be based on friendly and commercial relations with everybody[5].

(1) In 1510 Afonso de Albuquerque promised to preserve Hindu usages and customs. He deprived Muslims of their lands but recognised ownership by Hindus; the existing communal social organisation of the Hindus was not interfered with. In 1541 deep changes in policy took place; it was ordered that, since the majority of the population was no longer Hindu but Christian, lands and rents set apart for pagodas were to be used in support of Christian religion. Catholicism was declared the official religion and Hinduism became a tolerated religion. All main jobs in Goa were given to Christians.
(2)Instructions to Pedro Álvares Cabral in 1500 (apud João de Barros, Ásia, Lisbon, 1778, dec.I, pp.384-6).
(3) Regimento given to Tomé de Sousa, 17-12-1548 (apud S. Rego, op. cit., pp.86-90).
(4) S. Rego, op.cit., pp.66-7.
(5)S. Rego, op. cit., pp.51-2.

By the end of the 16th Century, however, the theory had undergone radical changes. In Angola the conclusion had been arrived at that domination over the territory, if it was to be lasting, meant war and conquest; the charter of concession of the one capitania granted in West Africa specifically referred to the Africans having to be 'subdued and conquered'(1).

In East Africa, too, things changed. The murder of Dom Gonçalo da Silveira, a Jesuit and a nobleman, on the orders of the Monomotapa, greatly grieved the Portuguese court. The expedition which was sent against the Monomotapa in 1569 was partly punitive and partly motivated by the ambition aroused by the gold mines. Disappointment was the sole fruit reaped by the expedition. The grand title of 'governor of the mines' given to its head, Francisco Barreto, was remarkably void of content in the face of the real situation with which these men were confronted - yet the whole enterprise is significant in that it reveals a shift in policy and indicates that gone were the days when Africans were to be treated as the King of Portugal's much esteemed property.

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It will have been inferred from what was said in the previous chapter that relations between the Portuguese and the Monomotapa kings were shaped by the purpose which had taken the European explorers to those distant lands, namely to trade. A right of way was the sort of concession the Portuguese were looking for in the first place and that was what they got. Somewhat later, but still during the period now under review, a second type of relationship developed from the fact that some stretches of territory were granted to private individuals by African kings. Such rights lacked

(1) Donation charter to Paulo Dias de Novais 19-9-1571 (Monumenta Missionária Africana, ed.A. Brásio, Lisbon, 1953, vol.III, pp.36-51).

security, as they depended on the African king's pleasure; but the emergence of a new situation is nonetheless apparent. Finally, it was mentioned before that some cessions of territory had been outright transfers, the native sovereign having reserved no rights for himself. These points can now be further illustrated, though not in any great detail.

That to secure peace and freedom to trade was the main aim of Portuguese diplomacy when dealing with African rulers is apparent from any contemporary account. The payments made to Monomotapa and Quiteve (1) had no other purpose. The treaty celebrated between Francisco Barreto and Chigaga, the king of Manica, merely aimed at enabling Portuguese traders to enter his kingdom freely and without hindrance. The outcome of the fight between the same Francisco Barreto and Mongàs, the King of Lupata, was the granting of a right of way to the Portuguese and the Arabs who worked for them(2). In a letter (3) to the captain of Sofala, Simão de Miranda, King Manuel recommended that the captain should do his best to ensure that there was peace in the hinterland, so that African traders could come to Sofala; they should also be well-treated and made to enjoy their trips to the factory(4).

In Chapter I reference was made to the feiras, the occasional markets of the interior which eventually developed into permanent villages. They represented a form of occupation which bore no relation to the situation as discussed in the previous paragraph. The Portuguese did not exercise full jurisdiction over the territory thus occupied, but only over their own residents; they were

(1) See ante, p.13.
(2) J. dos Santos, op.cit. I,I,17,24;I,II,18,27;I,II,6,50;I,II,9,54.
(3) Dateless.
(4) A. Lobato, A expansão, vol.II, p.37.

in no sense sovereigns over the country or the people - and yet, through the fact that they were settled on African soil, a new relationship between man and environment had come into being.

Apart from the case of the feiras it is known that grants to private Portuguese individuals were made by African rulers. The Dominican friar often quoted describes in detail one such concession, made by Quiteve to one Rodrigo Lobo. The African king gave him an island in the Sofala river, as well as the title of 'wife' - by which it was intended that all the king's subjects should show the Portuguese as much respect as was due to the king's wife. There was no question in this case of the concessionaire being sovereign, and the friar reports an incident which proves that the opposite was the true legal position(1).

It was mentioned before that during the 16th Century a third type of relationship was already developing between Portuguese and Africans. The special position of the captain of the feira of Massapa who had full jurisdiction over Africans as well as Europeans(2) in his area ('such jurisdiction having been granted to him by the Monomotapa') is a case in point. It is also known that in

(1)One day, by inadvertence, the concessionaire killed a lion. It being absolutely forbidden for a vassal of Quiteve to do so, Lobo decided to send the dead animal to the king, as well as a message to the effect that such lion had dared to insult the king by attacking his 'wife'. For this reason he had killed the lion and was sending it to the king to dispose of it as he pleased. The matter was satisfactorily settled and Lobo did not forfeit his island, as he might well have, the friar comments, had he not been so shrewd.

(2) In the case of Portuguese subjects an appeal lay to the captain of the area.

the 16th Century the Portuguese had jurisdiction over eleven villages [1] which had been donated by the Monomotapa to the captain of Tete - a Portuguese authority, one may note, and no longer a private individual. In each of these eleven villages there was an African chief whom the Portuguese captain appointed or replaced as he saw fit; and he heard appeals from Africans dissatified with any decision of their own chiefs. Whenever the captain required men for any military expedition - by no mean an unusual eventuality in those days - he would call these chiefs and their men to arms.

It is not the aim of this study to deal in detail with the relations between the Portuguese and the Mocaranga but some of the more obvious consequences of such contact may be mentioned. There is, for example, no evidence that the empire of the Monomotapa disintegrated because of Portuguese presence (according to the best sources it was already disintegrating), but there is abundant evidence that some kings were supported by the Portuguese in their struggle against others. By putting their weight behind one or another of the kings of the Mocaranga the Portuguese could not fail to affect the balance of power between the various African kingdoms. Secondly, some African kings saw their power increased and their country enriched just because they happened to have in their lands the one product that the Portuguese were interested in: gold [2].

(1)The people of these villages had once been conquered by the Monomotapa but as their area lay too far away to be governed by the emperor the villages were ceded to the Portuguese captain (J. dos Santos, op.cit.,I,II,17,64).
(2) 'Quiteve' is the richest of all the kings who have rebelled (against the Monomotapa) because he has much commerce with the Portuguese' (J. dos Santos, op.cit.,I,II,17,65).

Above all, trade relations in the 16th Century paved the way for future territorial occupation, and it is only too true to say that African kings started off by ceding advantages and ended by giving away their lands.

A last word may be said about the Arabs of South East Africa. References to the Arab population invariably stress that they had become impoverished and were relying on the Portuguese, who employed them in the various capacities, for survival. The formerly powerful sheikhs of the coast lost authority as they became tributaries instead of collectors of tributes; and, politically, their dependence on Portuguese recognition was degrading in the extreme.

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CHAPTER III

THE SYSTEM OF DONATARIAS OR CAPITANIAS

It was suggested in the Introduction to Part I that a thread of continuity can be found to run through all Portuguese colonisation and agrarian policies carried out by Portugal in her overseas possessions. It was further hinted that the prazo system - an essential feature of the European pattern of settlement in Mozambique for centuries - was not the spurious product of a legislator's imagination but had deep roots in the legal traditions of the country.

It is the author's contention that one of the two main sources for the institution of prazos was the system of donatárias or capitanias which was put into effect in various latitudes over a period of more than a century; the other and even more important source was the agrarian contract of enfiteuse, which dates back to the Greeks and the Romans and still finds its way into 20th Century Portuguese legislation. For the sake of clarity the present chapter will deal with the donatárias only, leaving enfiteuse for the next chapter.

When the Portuguese discovered the islands of the Atlantic in the early 15th Century they found them to be deserted. As no local populations had to be taken into account, Portuguese political ideas prevailing at the time could be applied in their integrity. Such ideas were, naturally, of a feudal or quasi-feudal nature. Pure feudalism is considered not to have flourished in the Peninsula generally, and even less in Portugal, as wars waged against the 'infidel' Moors made for centralisation of powers in the hands of the king[1]; but

(1) The new kingdom of Portugal had, in addition, to assert its independence vis-à-vis its Christian neighbours, from which it had seceded.

there is no doubt that there was in mediaeval Portugal a class of landlords, both lay and clerical, who constituted the apex of the social pyramids, holding vast tracts of land and many of the privileges of sovereignty ceded to them by the king(1).

The islands of the Atlantic were given to worthy members of the Portuguese nobility in much the same way as the lands conquered from the Moors in the Peninsula were given to those noblemen who had helped the king to conquer them. In one case it was specifically stated in the royal charter that prince Henry the Navigator was to enjoy over the Atlantic islands the same rights as he held with regard to his property in Tomar, in the kingdom(2).

Henry the Navigator was not a donatário(3) in the usual sense of the word. He has been represented by historians as the brain and the will behind the enterprise of the discoveries (4) and appears to have been on an almost equal footing with the king. He was driven into the discoveries by his Christian spirit, the wish to make converts, as well as by his obligations towards the Order of which he was the governor and administrator(5). It is likely that the king recognised his special role and wanted him and his Order to benefit from the rents of the new lands(6) without having in mind that

(1) The system prevailing in Portugal during the Middle Ages is usually called senhorial (seigneurial) and not feudal.
(2) Letter from King Afonso V, 4/1/1458 (In Documentos sobre a expansão portuguesa, ed.V. Magalhães Godinho, Lisbon, dateless, vol.I,p.149)
(3) It might be useful to make it clear that the term donatário was applied to the concessionaire, whereas donatária or capitania was the area which he governed.
(4) Largely financed with the rents of the Order of Christ.
(5) The Ordem de Cristo, successor in Portugal to the Order of the Temple. The wish to promote the prosperity of the Order is mentioned by the King Afonso V in a letter dated 1458.
(6) Although his seigneurial house was already 'perhaps the most powerful economico-social force in the kingdom'.(V.M. Godinho(op.cit., p.166) enumerates the possessions of prince Henry.

he should be directly responsible for their colonisation.

What we do know as an historical fact is that in 1433 he was given territorial jurisdiction over the Atlantic islands, as well as civil and criminal jurisdiction over its future inhabitants, with the restriction that 'ultimate justice' (justiça maior) was to remain in the king's hands; the king further reserved for himself the right to send his justicians to the prince's lands and the prince was not allowed to coin his own currency but was bound to adopt that of the kingdom.

Prince Henry disposed of such rights as were granted to him in favour of noblemen who became donatários in the usual sense of the word,[1] i.e., not only had they some sovereign rights but also the obligation to promote settlement in their territories. The extensive powers of the donatários and the fact that they were granted such concessions as a reward for services made them closely akin to the feudal lords of Portugal; while the requirement to promote settlement was a new feature, peculiar to the system.

The islands of the archipelagoes of Madeira and Azores were thus given, throughout the 15th Century, to several men of distinction. The Crown had the general benefit of having its new lands developed without expense and the more specific one of deriving a percentage from their rents. It adopted the enlightened policy of

(1) D.K. Fieldhouse draws an analogy between the Portuguese system of donatárias and the mediaeval system of the palatinate adopted by the English in certain cases. In the 17th Century the system of the delegation of quasi-sovereign powers by the Crown to a subject to rule a territory on its behalf survived in Durham, the Channel Islands and the Isle of Man. Some of the American colonies were based on these proprietary patents: for example, Maryland was granted by Charles I to Lord Baltimore in fief. Maryland and Pennsylvania remained in the hands of feudal proprietors until the American revolution (D.K. Fieldhouse, The Colonial Empires, Lond., 1966, p.60).

exempting the products of the islands from any export duties;[1] and the choice of agricultural products to be planted in the islands was also a happy one in that they were those best suited to local conditions of soil and climate[2].

In 1440 Prince Henry granted half the island of Madeira to Tristão Teixeira. Jurisdiction was transferred to the donatário except for the fact that ultimate justice remained with the king. Of all the rents due to the prince as governor of the Order of Christ [3] the donatário would receive one-tenth. This percentage of the rents, together with the above mentioned jurisdiction, would pass to Teixeira's heirs in the male line. The concessionaire was also to benefit from purely feudal privileges, such as that of owning all water mills and ovens of bread; salt too could only be bought from somebody else if he did not have it for sale[4].

Tristão Teixeira could give land to whom he wished, on the understanding that it had to be cultivated within five years; failure to cultivate would enable the donatário to give it to someone else. Unused land could be given away by the prince himself[5]. The owners of cultivated farms were entitled to sell them.

When the Atlantic islands, together with the rights and rents therefrom, were granted to Prince Henry by his brother King Duarte, the latter had stated that the prince could, if he so wished, collect a rent (foro)[6] from settlers for the use of the land. The

(1) Letter from King Afonso V, 1/6/1439 (In Documentos, p.183).
(2) A contemporary author refers to the large quantities of cattle and wheat (of which there was a traditional shortage in the kingdom) being exported to Portugal every year (Diogo Gomes 'Relação dos descobrimentos da Guiné e das Ilhas', Bol. Sociedade de Geografia de Lisboa, 17a Série, No.5, 1900). Sugar-cane from Sicily was also very successfully introduced in Madeira by Prince Henry.
(3)Settlers were not bound to pay any other tributes(Charter of King John I, dateless, in V.M. Godinho, Documentos, pp.177-8).
(4)Charter of donation by Prince Henry in favour of T.Teixeira, 8-5-1440 (In V.M. Godinho, Documentos, p.186).
(5) Who was thus able to promote settlement if the donatário failed to fulfil his obligations.
(6) The rent paid in a contract of enfiteuse - see next chapter.

Prince, however, chose to renounce this benefit; he merely collected what was due 'to God and the Order of Christ';[1] since he had transferred 'the spiritual' of these islands to the Order (while 'the temporal' remained with the donatários).[2]

The case of the Madeira concessions was far from unique[3]. Prince Henry also gave to his brother, Prince Pedro, 'who begged for it', the temporal of the island of S. Miguel in Azores. The adopted son of Prince Henry, Dom Fernando, was given in 1457 those islands yet to be discovered; the island of Porto Santo, in the archipelago of Madeira, was granted to Bartolomeu Perestrelo in 1446 on the same terms as those alreayd described; the island of Corvo was donated to the Duke of Bragança in 1453 as a reward for the 'many and exceptional services' rendered by him.

Differences between the various available royal charters of donation are negligible: the percentage of rents the Crown or Prince Henry were reserving for themselves might vary, the restrictions to which the powers of the donatários were subject might also differ slightly from one charter to another. But the purpose behind the scheme was the same in all cases. Portuguese nobility was becoming restive at a time when wars against the Moors in the kingdom were over. To fight was its raison d'être as a class and the means to increase fame and profit. The King's brothers themselves informed the king of their wish to leave the country and make a living elsewhere[4]; and the unsuccessful military expedition to Tangier was

(1) The dízimo or dízima.(tithe). This was the tribute traditionally paid to the Church on all products of the land; the word means 'one-tenth' but its actual amount varied (e.g. in Guinea the dízima was one-twentieth - Charter by King Afonso V, 4-1-1458(In V.M.Godinho Documentos, p.150).

(2)This distinction between 'the temporal' (o temporal) and 'the spiritual' (o espiritual) is constantly made in contemporary Portuguese documents.

(3) Madeira was divided in two concessions. The Western part of the island was given to João Gonçalves Zarco on the same terms as those already described for Tristão Teixeira.

(4) Dom Fernando to King Duarte (Frei João Álvares, 'Crónica do Infante Santo', in Documentos, p.82).

embarked upon in order to provide an outlet to the nobility[1]. The occupation of the fertile Atlantic islands, together with the exercise of almost unlimited powers of jurisdiction, appeared as an alternative, and a promising one at that.

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The next place where the system of capitanias or donatárias was adopted was in Brazil. In India the Crown had not been prepared to renounce its prerogatives and the monopoly of oriental trade remained firmly in its hands[2]. But Brazil did not, in the early 16th Century, appear as a very promising land; it produced no spices, neither was it believed to hold any precious metals in its soil: as one author puts it, 'brazil' wood, parrots and monkeys were all it seemed to produce. The fact that there were no ready-made profits to be reaped once more led the Portuguese Crown to cede the exploitation of the territory to those who were in a position to finance the enterprise themselves.

Before the system of donatárias was applied to Brazil, that of granting the monopoly of trade to a concessionaire was tried for some years - again a traditional solution already experimented with in Africa[3]. And, as in Africa, it was a condition of the con-

(1) Ibidem, p.83.
(2) The death penalty was imposed on transgressors. Crews in the ships were allowed to trade in small quantities of spices but these products were sold by the government (Casa da India) at fixed prices.
(3) E.g. no one was allowed to sail beyond Cape Bojador without the permission of prince Henry; ships captured in violation of this ruling (which was ratified by the Pope), and their cargoes, would become the property of the Prince.

cession that every year so many boats would be sent to explore the neighbouring coast[1]. In the first year of the lease the concessionaire was not bound to make any payment to the Crown; but on the second year he had to pay one-sixth and in the third year one-fourth of the value of the exported goods. A new requirement, imposed on the first monopolist of trade in Brazil and not formerly in force in Portuguese possessions, made it necessary that at least one fortress should be built and maintained by him.

The system outlined was of short duration and by 1530 the Portuguese Crown decided in favour of adopting in Brazil the system which had produced such rewarding results in the Atlantic islands.

The Brazilian coast was divided into fifteen capitanias: fifteen stretches of land extending into the interior as far as each donatário[2] was able to go, provided he did not cross the line agreed at in the Treaty of Tordesillas, 1494. Some of these captaincies - three altogether - were never occupied and the whole scheme fell far behind expectations.

As in the case of the capitanias of the Atlantic islands, one ought to distinguish the relationship between the captain and his king from that of the settlers vis-à-vis the captain; in the former case the rights and duties of the captain were provided for in the carta de doação (charter of donation), while those of the settlers were established by the carta de foro or foral[3].

(1) In 1469 the monopoly of trade was given for five years to Fernão Gomes - who was also under the duty to pay a rent - on the condition that he should discover annually 100 leagues of coast beyond Sierra Leone.
(2) In Brazil the donatário was usually called captain (capitão) or governor (governador) but the term donatário can nevertheless be used in its wider sense (anyone to whom a donation is made is a donatário in Portuguese legal terminology).
(3) For a brief discussion on the nature of these statutes, see next chapter, p. 56.

The laws applicable were those of the kingdom and justice had to be administered by persons appointed by the captain for the job. But within these limits the captains held the widest legislative, executive and judicial powers (1) and their jurisdiction was indeed wider than that of their predecessors in the Atlantic islands. Not only did they appoint their own Chief Justice, judges, officials and clerks for the whole captaincy but they were not bound to allow for the supervision, exercised from time to time, of the justicians of the king. What is more, the king did not reserve for himself - as he jealously did in the case of the captaincies of the 15th century - the right of 'ultimate justice' (justiça maior) and a man could be hanged in Brazil without the case being referred to Portugal. The captain, on the other hand, could only be tried in Portugal by the king in his court.

The powers of the captain included: founding villages and towns according to the laws and customs of the kingdon, appointing their officers; collecting 5% of the fish revenue; collecting the redízima (10% of the 10% duties to be paid to the Crown or to the Order of Christ on certain goods)(2), levying a tax of 5% on all the Brazilwood exported, the monopoly of which belonged to the Crown; acquiring and retaining enough slaves for navigation in the rivers and selling yearly in Lisbon a certain number of slaves, tax free; having the monopoly of salt and watermills(3).

(1) The sovereign power of making war and peace was generally a matter for theologians and jurists to decide upon and donatários were not meant to wage wars unless they had heard a council composed by such men. But this ruling was not always obeyed by the Brazilian captains who were known for making wars against natives for very trifling reasons (Silva Rego, op.cit., p.84).
(2) The same privilege was granted to the first donatário of Madeira.
(3) 'Carta de doação da capitania de Pernambuco a Duarte Coelho, 5-9-1534', in História da colonização portuguesa no Brasil, ed.Roque Gameiro et.al., Porto, 1924, vol.III, pp.309-12.

The fact too that the captain gave away land in his captaincy implied that he possessed important powers of sovereignty, as his grants were, in many respects, similar to the King's[1].

On the whole, land was to be given away to settlers who undertook to cultivate it within a given time. But the donatário could also keep a certain amount for himself (varying from 10 to 16 leagues) with the proviso that it had to be scattered throughout the capitania and could not form a single block. Obligation to cultivate applied to this land too but the captain could choose the type of tenancy he wanted to grant. In short, the position was that the donatário was an authority vested with public powers[2] who was also, with regard to a certain area in his captaincy, a landlord engaging in some form of agrarian contract with his tenants.

Settlers were protected by the foral. They could not be deprived of their lands and in time acquired full ownership over them. Besides, they enjoyed almost complete freedom to trade. Except for the monopoly of the Crown[3] any settler as well as any donatário could engage in trade provided he did so within the area of his own capitania; and if he was a Portuguese national he was not bound to pay any export or import duties on his goods. Taxation too was not heavy: practically only the tithe (dízimo) to the Order of Christ and no more.

The difficulties and hardships with which donatários and settlers were faced, largely account for the almost complete failure

(1)P. Merêa, 'A solução tradicional da colonização do Brasil', in História da colonização portuguesa no Brasil', vol.III, p.183.
(2)The powers of administration given to the donatários resemble those granted at various times to the chartered joint-stock companies; in the case of the companies, however, the risk was spread among a body of subscribers.
(3)Brazilwood, slaves and spices, as well as one-fifth of all metals and precious stones 'to be discovered in future'.

of the system to produce in Brazil the results which had been anticipated. The aggressiveness of the native tribes, constant attacks by the French, the poor quality of the settlers themselves (most of them convicts)[1]; the badness of the climate, are among the causes more often quoted. As one donatário put it, it was a question of conquering by the inch the territory which had been granted him by the league[2].

Complaints from all quarters led the central government to intervene and to appoint a governor-general in 1549. It was evidence of the determination not to break abruptly with the past that he was made a donatário as well as a representative of the government. The instructions given to him also stressed the need to obtain the co-operation of other captains towards a common effort. Co-operation and co-ordination of efforts were the key words in the instructions given to Tomé de Sousa, the first governor-general. Yet there can be little doubt that the old system was undergoing radical changes. The Crown would henceforth intervene directly in matters of justice and revenue[3]; the power was given to the governor-general to inspect the capitanias[4]; trade between settlers and natives in the interior was to stop; the highwayman practices of slavery and war against the natives were to be discontinued; and the freedom of settlers to move from one captaincy to another was curtailed.

(1)In 1535 it was decided in Portugal that deportation to S. Tomé island was to be replaced by deportation to Brazil. One of the donatários alone took with him six hundred convicts.
(2) Letter of Duarte Pacheco to the king (A. Ballesteros, História de América, Barcelona, 1956, vol.XXVI, p. 380).
(3) A customs house was to be built in Baía, as well as a Royal Treasury House in which the accounts of all the capitanias would be kept.
(4) One donatário, Duarte Coelho, by his high standards of administration and personal integrity, was exempted from such supervision.

The powers held by the donatários were consistently reduced in Brazil as elsewhere in the Portuguese possessions and the capitanias were reintegrated into the Crown at the end of a process towards centralisation which lasted for over two centuries.

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The most remarkable fact about the system of capitanias or donatárias is that it was not rigidly applied to all Portuguese possessions in the 15th and 16th centuries but was constantly developed and improved according to local conditions and the teachings of experience.

In Angola the Crown did not consider it to its advantage to partition the whole coast among captains - as it had done in Brazil with uneven results - but chose to give one single stretch of land to a man of outstanding qualities. Incorporation into the Crown would thus be facilitated and the scheme (with what it implied of centralisation of power) was better suited to the purposes of conquest, which constituted the admitted aim of the enterprise.

The charter of donation to Paulo Dias de Novais, dated 19th September 1571, resembles previous charters in that it was granted as a reward for services[1] and as a means of achieving the colonisation of the territory without the Crown having to pay for it[2]. The grant was of thirty-five leagues of coast extending, as in Brazil, as far inland as the donatário could go. As in Brazil he

(1) Not only his own but also those of his grandfather, Bartolomeu Dias, the discoverer of the Cape of Good Hope.
(2) No money or any other (material) help should be expected from the Crown ('sem de minha fazenda lhe haver de ser dada ajuda alguma de dinheiro nem de outras coisas' - 'Carta de doação a Paulo Dias de Novais', in Monumenta, vol.III, pp.365).

had the power to appoint chief justice, judges and officers and through them exercise unlimited jurisdiction, both civil and criminal, over all settlers except those of a higher status[1]. Justicians of the kingdom were not as a matter of course allowed in the capitania[2].

On the other hand, the king made sure that no new laws were introduced. Throughout the charter of donation one notices his concern that the liberties of villages and towns to be founded agreed with those prevailing in the kingdom and that no land, once given to a village, was transferred to another village without his consent; the laws to be applied by the courts were the Ordenaçõ̃es in force in Portugal; and the jurisdiction of the lower courts was to conform to that of their counterparts in the kingdom.

Paulo Dias was to benefit from the usual privileges - 5% of the fish caught, monopoly of salt, watermills and other engines to be established in the country [3] - but his share of the royal rents was much higher than had ever been the case with other donatários: a third (instead of one-tenth) of all the rents and rights due to the Order of Christ in the captaincy,[4] as well as one-third of the profits on all trade eventually developing in the capitania. A benefit by no means negligible was that by which the captain was granted the monopoly of cowries south of the river Dange, such shells being the main currency in the area. The captain was also allowed

(1) In this case the jurisdiction of the donatário was limited to deportation for 10 years and a fine of a hundred cruzados.
(2) As they were in any part of the kingdon; but the king could order exceptional inspection to take place if he thought fit to do so.
(3) Settlers could only have their own on payment of a licence issued by the donatário.
(4) One-fourth to his successors.

to send to Portugal every year forty-eight slaves, free of duty, and any other slaves provided duty on them was paid. Captain and settlers were not bound to pay tributes or perform personal services of the kind prevailing in the kingdom but only those specifically indicated in the two fundamental legal documents of the capitania.(1)

As in the case of Brazil the donatário could choose, out of the 35 leagues of the captaincy, 20 leagues of land for himself, for which he would pay no tribute other than the usual 10% on the sale of goods to the Order of Christ; such land, however, could not form a block but had to be divided into four or five portions distant from each other no less than two leagues. This land could be leased by the donatário(2) in whatever way he wished and would pass, together with the rents therefrom, to the donatário's heirs.

The king took good care that the private interests of the captain would not supersede those of his captaincy. The donatário was under the duty to distribute the land and was not allowed to take for himself (or his wife or heir) any area beyond the 20 leagues referred to, except by purchase.(3) The land of the capitania was to be distributed free of rent (foro)(4) among the settlers; relatives of the donatário could also be given land but the amount granted to them could not exceed that ceded to strangers to the family.

(1) The carta de doação and the foral. Only the former is available, the foral is considered lost.
(2) The contract suggested in the charter of donation as the most likely to be celebrated was the contract of enfiteuse. A foro (rent) could be charged, in spite of the fact that no such payment was due elsewhere in the capitania.
(3) But the seller could only sell his land if he had been cultivating it for at least eight years.
(4) The rent paid in a contract of enfiteuse.

As usual, the donation was hereditary and the charter indicated the order of preference to succession: firstly male, then female children, illegitimate children, collaterals and ascendants of the captain.(1) On no account - not even for pious purposes so common in the Peninsula - could the captaincy be divided or alienated.

It is to be noted that to the larger profits of Paulo Dias as compared to other donatários corresponded new duties and more onerous expenses. He was under the duty to take to Africa a number of ships(2), fully equipped, which would set about to discover all the rivers and ports as far as the Cape of Good Hope.(3) He should also take four hundred men "who could fight with their arms" including some skilled workers;(4) the captain should take from the kingdom sufficient food to keep them for a full year. He was also under the duty to build three castles in the Crown lands outside the capitania(5). No less burdensome was the obligation to promote, within six years, the establishment in his captaincy of one hundred families (some of whom farmers), provided with 'all the seeds and plants that could be taken from Portugal and S. Tomé'. A first church was also to be built at the expense of the captain and Paulo Dias was under the obligation to take three priests and pay for the expenses of the cult.

(1) In Portugal herself the tendency had for a long time been towards recalling to the Crown grants made in time of crisis with excessive generosity and no such wide range of heirs was recognised. This is further evidence of the flexibility of the Portuguese kings of the period when dealing with overseas matters.
(2) 1 galleon, 2 caravels, 5 brigantines and 3 muletas.
(3) We see here a fusion of the system of donatárias with the trade leases of Guinéa and Brazil (early days).
(4) Recently converted Jews (cristãos novos) were not to be taken, presumably because there were doubts as to the firmness of their convictions (one of the aims of the enterprise was stated in the charter of donation to be the spreading of the Catholic faith).
(5) Where active trade was already carried out between the Portuguese and the natives.

The purpose of colonising Angola and making it a prosperous colony was frustrated for the time being. The silver mines on which so many hopes were placed proved a mirage and the large profits which could be rapidly made with the slave-trade[1] led to the abandonment of more arduous forms of earning a living. After the death of Paulo Dias the country was plunged into wars between Europeans and Africans, and no one came forward to take the place of the donatário. In 1591, after an enthusiastic report on the economic possibilities of Angola, it was decided that its colonisation should not be discontinued and a governor-general was appointed[2].

The system of capitanias, put into effect in three continents, was not to be revived except in the modified and somewhat less feudal version of the prazos.

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(1) In 1681 it was estimated that during the previous century one million slaves had been exported from Angola (História da expansão portuguesa no mundo, ed. A. Baião, H. Cidade e M. Múrias, Lisbon, 1937, vol.V,p.453).

(2)This was the general trend by the end of the 16th Century: to appoint a nobleman as military and civil governor, assisted by a permanent justician of the king; but the confusion prevailing at the time between the legislative and the administrative functions makes the limits of these jurisdictions somewhat imprecise (História da expansão...,vol.II, p. 78).

CHAPTER IV

THE CONTRACT OF ENFITEUSE

Origins - This form of agrarian contract is considered by specialists in civil law to date back to ancient Greece, to have prevailed among the Romans and to have been introduced into the Iberian Peninsula during Roman domination. The contract had in Greek the name of emphyteusis (literally,a plantation),[1] which has been passed on to the Portuguese language[2]. In Rome the term was not used until the days of the Empire and the contract was up to that time known as 'perpetual location'.

Enfiteuse was a form of contract particularly suitable to areas of backward agricultural economy, where abundance of vacant land was not matched by a sufficient number of farmers, who thus had to be attracted to the labours of the land. Being a perpetual, or at least a long-term lease, and also a lease in which only a nominal rent was paid, enfiteuse was less onerous and provided more security than the remaining forms of tenure prevailing at the time. With its entire provinces donated to military orders, nobility and clergy, Portugal was as suitable a country as any for enfiteuse to flourish, and in fact kings, noblemen and religious orders made ample use of such conditional donations.

As was inevitable, during the Middle Ages the contract suffered the impact of feudal ideas. In addition to paying a rent the lessee - only a few years back a mere serf - was under the obligation to per-

(1) Derived from phytos (plant).
(2) The term was used for the first time in Portugal in the 13th century in an erudite document (M.J.B. Almeida Costa, Origem da enfiteuse no direito português, Coimbra, 1957, p.165).

form some personal services, mostly in time of war but also in normal times, such as to plough the lands of the grantor[1] or transport his goods free of charge. The lessee was also bound by some negative servitudes[2]: he was under the obligation not to make his own olive oil nor own an oven of bread, nor sell his harvests before those of the grantor had been sold[3].

During the Middle Ages contracts of _enfiteuse_ sometimes had the duration of one life or a number of lives, while in other instances they were perpetual; in the latter case restrictions might or might not be imposed on who was to succeed to the deceased lessee, i.e., whether any heir was an heir for the purpose of the lease or only his children.

In present Portuguese legislation one finds side by side with the term _enfiteuse_ those of _emprazamento_, _aforamento_, _prazo_ or _foro_. According to specialists in civil law these terms, while synonymous, are more accurately used when used in the following way: _emprazamento_, _aforamento_ and _enfiteuse_ should refer to the contract itself, _prazo_ to the immovable which constitutes the object of the contract, and _foro_ to the rent paid to the lessor.

The term _prazo_ - familiar to any student of Mozambique history - was of common usage in Portugal throughout the 12th century. But it had the wider meaning of 'agreement' (being derived from the Latin

(1) The terms lessor-lessee, grantor-grantee are being used indiscriminately because the relationship is a _sui generis_ one and all such terms are equally inadequate. For a discussion on the legal nature of _enfiteuse_, see below pp.57 _et seq_.
(2) Called _direitos banais_ (common rights) in mediaeval Portugal.
(3) It was mentioned that the system was exported in the 15th century and that exactly the same type of servitudes was imposed on settlers of the Atlantic islands. (see _ante_, p.42).

placitum) and did not refer to a particular type of agrarian contract or even to contracts of exploration of the land generally[1]. On the other hand, contracts in two or more lives (later called prazos em vidas - prazos in lives) were already entered into during the same century.

Throughout the Middle Ages agreements between lessor and lessee could either be of a collective or of an individual nature. The cartas de foro or cartas de povoação of the 12th century were no more than aforamentos por título genérico (leases of a general kind), that is, they were charters containing the rights and duties of the inhabitants of a particular place vis-à-vis the person granting the charter; they were abstract and general in character since they did not refer to any particular person but to certain broad categories of people. Side by side with these contracts there was also, as early as the 12th century, the type of contract (perpetual or for a life or lives) which I have called individual and which was concluded between the lessor and a particular lessee[2]. Similarities between the two types of contract are obvious but should not obliterate a very important distinction, namely that the 'individual' agreements mentioned are contracts in civil law whereas the collective ones are not, but rather administrative and financial acts.[3]

In this field it was the task of the jurists of the 13th century to tidy up, rather than to innovate. When the study of Roman Law was revised throughout Europe the jurists systematised and made scienti-

(1) M.J.B. Almeida Costa, op.cit., p.4.
(2) The prazos of Mozambique of the 17th century onwards - concluded between Crown and lessee - were of the second type, whereas the relationship between donatários and settlers generally (provided for in a carta de foro) was of the first type.
(3) Hence the ambiguity of the 'rent' paid, which in fact partook of the nature of a tribute.

fica body of rules which, although in operation for centuries, amounted to no more than 'a legal feeling of the people'.(1) Revival of legal studies was a European phenomenon, and enfiteuse, by its ability to comprehend a variety of legal situations, became the object of attentive study.

Nature of the contract - the basic legal fact about any form of enfiteuse is that it causes the right of ownership to split into a dominium directum, which remains with the person transferring the land, and a dominium utile, belonging to the transferee; in return for the rights ceded, the latter pays a rent or pension, called in Portuguese foro or cânone. The party who transfers the property is called senhorio(2), the one to whom it is transferred is called foreiro (3).

The classical view of the legal position of the parties to the contract was that ownership belonged to the senhorio. It was argued that since he had been the full owner before the contract was concluded, nothing was more natural than he should reserve ownership for himself; if that were not the case it would have been preferable for him to sell the land. Secondly, supporters of the theory argued that the fact that the senhorio had a right of preference in all intended alienations by the foreiro proved that he was the owner, not least because, if he chose not to exercise his right, he was entitled to a payment (laudémio)(4). Thirdly, failure on the part of the foreiro to fulfil the obligations imposed by the contract (payment of a rent,

(1) M.J.B.Almeida Costa, op.cit., p.164.
(2) Or senhorio directo or directário.
(3) Or enfiteuta, senhorio útil or utilista.
(4) The term is apparently derived from laudo emptio.

cultivation of the land) led to his forfeiting the land - and this too proved that the *senhorio* was the true owner.

Under the influence of the French Revolution ideas on land tenure and ownership changed radically. The *foreiro*, and no longer the *senhorio*, was viewed in 18th century France as the true owner. After the Revolution the contract of *enfiteuse* was eliminated from the French Civil Code, although in effect it continued to be made[1]; it was re-established by the Law of 25th June 1902 with the maximum duration of 99 years, after which time the right of the grantor was extinguished.

Modern lawyers who maintain that the real owner is the *foreiro* base their arguments on the following grounds: a) the fact that the *foreiro* can get rid of the *senhorio* by paying 20 times the value of the rent[2], thus acquiring the *dominium directum* as well as the *utile*; b) the fact that the *senhorio* does not have a similar power to free the land from the rights owned by the *foreiro*; c) the fact that *laudémio* was abolished(3), d) that the *foreiro* is the one who occupies

(1)L. Cunha Gonçalves, *Tratado de Direito Civil*, Coimbra,1929, vol.9, p.217.
(2)Provided the contract was entered into twenty or more years ago (Portuguese Civil Code, 1867, art.1654 - 1). The decree of 30th September 1892 provided for the compulsory remission of *foros* but it was repealed in 1895; in 1911 (decree of the 23rd May) it was definitely established that *foros* can always be redeemed.
(3) Art. 1657 of the Civil Code. But the *senhorio* still maintains a right of preference in all intended alienations by the *foreiro*; what he can no longer do is to sell this right (to receive an amount of money for renouncing his right).

the land; he can cultivate it or exploit it as he sees fit; he can alienate or mortgage it[1] and the senhorio cannot prevent him from doing so; e) failure to pay rent or to cultivate the land does not lead to its being forfeited ~~by~~ to the senhorio - the latter can only sue for the rents due and interest thereof.[2]

The doctrine just outlined is not new in so far as old writers had already considered that the dominium directum was a jus dormiens because seldom exercised; rent is paid once a year and the laudémio was due in certain circumstances only. A third school of thought may be mentioned[3] according to which neither senhorio nor foreiro have a right of absolute ownership. The rights owned by each party to the contract are sui generis and amount to what the Portuguese Civil Code calls 'imperfect ownership'[4].

Several features may be noted in enfiteuse as it is now regulated by Portuguese law. In the first place, the contract is perpetual, at least as far as the senhorio is concerned: it can be term-

(1) The following are the relevant articles in the Civil Code. Art. 1676: 'The foreiro can mortgage the land and burden it with any charges or servitudes without the consent of the senhorio provided the mortgage or the charge does not exceed a part of the value of the land equivalent to the rent (foro) plus one fifth. The senhorio has a right of preference in any leases for a period exceeding 10 years! Art.1677: 'The foreiro may donate or exchange the land freely; but he should inform the senhorio within 60 days counting from the date the transfer took place. Otherwise he will be held responsible, together with the cessionaire, for the payment of the rents' ; Art.1678: 'If the foreiro wants to sell, or give in payment, the land subject to a contract of enfiteuse, he should so advise the senhorio, informing him of the price being offered to him or at which he proposes to alienate the land'.

(2) Art. 1671 of the Civil Code, His right is extinguished by limitation, like any other credit. In Portuguese Africa, on the contrary, failure to cultivate the land is sufficient ground for rescinding the contract.

(3) Represented, inter. alia, by Prof. Cunha Gonçalves.

(4) Art. 2187 has the following definitions to offer: 'Perfect ownership is that which consists of the fruition of all the rights contained in the right of ownership; imperfect ownership is that which consists of the fruition of part of such rights'.

inated only if the foreiro chooses to do so in the way described, thereby acquiring full ownership. Temporary agreements of the kind of prazos in lives (adopted in Mozambique) are at present not permitted by the Civil Code(1).

Secondly, the object of the contract must be an immovable(2). In the past it was argued by some jurists that revenue of various kinds could be transferred according to the rules of enfiteuse. In fact, when one speaks of the prazos in India one has in mind contracts of this type, since what was mostly granted to the women under royal protection were rents from villages, offices, water-mills, etc. rather than lands themselves. At present the contract of enfiteuse , by express provision of the Code, deals with land only and not with rents of the kind described, which are movables (though arising from immovables).

Another innovation of the Civil Code, 1867, is the requirement that the amount of rent due (foro or cânone) be certain and fixed. In the past it could be a fraction of a harvest or its value in money; this custom has persisted in Portuguese India, the contract of Meias(3) being still celebrated there(4). This legal custom was a source of much litigation and was abolished in Portugal during the 19th century.

Indivisibility of the prazo has been a feature of the contract of enfiteuse since the late 16th century(5). At present the prazo can be divided only with the senhorio's agreement; but division is not to take place if any of the resulting prazos has an area inferior to 20 hectares.

(1)Art. 1654 and 1697.
(2)Art. 1664 of the Civil Code.
(3)Literally 'halves'.
(4) L. Cunha Gonçalves, op.cit., Vol.9.
(5) Ordenações Filipinas, liv.IV, tit.36 and 37.

According to the Civil Code, *prazos* (being perpetual) can be inherited by the *foreiro's* heirs, either testamentary or legitimate;[1] if the deceased left no heirs, they revert to the *senhorio*.[2]

Finally, it may be useful to distinguish the contract of *enfiteuse* from those which it most closely resembles: the contract of *arrendamento* (leasehold)[3] and the contract of usufruct. As to the former, there is one essential difference: leases are always temporary, whilst *enfiteuse* can be perpetual. As to usufruct, the range of differences is wider: not only is usufruct temporary but the usufructuary pays no rent to the owner, while the *foreiro* pays the *foro*; the contract of usufruct may affect movables as well as immovables, while *enfiteuse* may not; the *foreiro* may liberate the *prazo* and become full owner, whereas the usufructuary cannot force the owner to convey his right to him; and the *foreiro* can grant servitudes in favour of third parties, a right which the usufructuary does not have.[4]

Being an institution alien to English law, it was considered useful that a detailed description of the contract of *enfiteuse* be provided;[5] and it was also borne in mind the remark by one of the first governor-generals of Mozambique that he had been utterly unable to explain to

(1) Here I am translating Portuguese terminology - 'legitimate' heir (*herdeiro legítimo*) is the person(s) who will succeed if the deceased left no will: whereas a *herdeiro legitimário* is the person(s) who cannot be displaced by a will. I am comprising both categories in the term 'legitimate'.
(2) Including the state; but the state is not a legitimate heir to a *prazo* (although it can be a heir with regard to other forms of property).
(3) The contract of *locação* can take two forms: *arrendamento* (if the object of the contract is an immovable) and *aluguer* (if it is a movable).
(4) The usufructuary 'can lend or rent the object and even alienate its usufruct; but the contracts he may make are valid only so long as the contract of usufruct lasts'. (Art. 2207 C.C.).
(5) For a good and brief summary on the subject, see J. Dias Marques, *Direitos Reais*, Lisbon, 1960, vol.I, pp.125 *et seq*.

Mr. Alfred Sharpe, the Commissioner for Nyasaland, what enfiteuse was about, as the whole thing made so little sense to the latter.(1)

Relevance of the contract - Not only does it date back to pre-independence days of Portugal but it was consistently exported to the colonies. In one form in the Atlantic islands and Brazil, in another in India, in yet another in Mozambique, it was the main, when not the exclusive, form of land occupation for centuries. In Mozambique is constituted until the late 19th century the sole mode of European tenure; short-term leases eventually found their way into colonial legislation and at present both co-exist on an equal footing side by side. But enfiteuse has lost none of its importance and the latest enactment on land tenure, dated 1961, makes full use of an institution which simply refuses to grow old.

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(1) António Enes, Moçambique, Lisbon, 1893, p.23.

PART II

THE 17TH AND 18TH CENTURIES
HEYDAY OF THE PRAZO SYSTEM

During the 17th and 18th centuries the prazo system was the most important feature of Portuguese occupation in South East Africa. It represented an attempt, on the part of the central government, to shape the de facto possession of land by Portuguese subjects into a legal formula accepted in the kingdom from time immemorial. Secondly, the system was important because sovereignty of the Portuguese crown in that part of Africa was only exercised over prazo lands acquired through individual effort - all military attempts to conquer the hinterland during the late 16th and early 17th centuries having failed and been abandoned by the Crown.

Administration to a large extent grew spontaneously out of the social and economic conditions of the time and was thus as 'organic' as any administration has ever been; but some amount of intervention did take place and creation of prazos and setting-up of administration, however locally rooted, were two sides of the same attempt at organising social relationships. A first chapter will describe the bodies of administration and their jurisdiction, and the extent to which they were a response to local needs.

A second and a third chapters will then deal with the prazos: their legal nature, the social function they were expected to perform, their historical affiliation to previous forms of Portuguese colonisation and their relative failure to fulfil the purposes for which they were created.

In a fourth chapter an attempt will be made at discussing the sort of contact between Europeans and Africans which was the natural outcome of the political and social system and some of the effects of such relationship on African traditional life; in particular, the impact on customary land law and tenure will be examined.

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CHAPTER V
ADMINISTRATION OF S.E. AFRICA

The term 'administration' can apply both to the machinery of government (set up either for the whole of a territory or for a given region) and to the acts performed by such machinery in the pursuance of a given policy. Since it would hardly be possible to deal with both what the administrations were and what they did in Portuguese South-East Africa over a span of time of almost four hundred years, and since the main purpose of this study is to investigate the impact of European domination on some African customary laws, it was considered that the dynamic view of administration was to deserve special though not exclusive attention.

Secondly, no attempt has been made at indicating all the developments which took place in administration - in both senses - at every period. This was considered to make for confusion rather than elucidation; changes, both in structure and in policy, have been mentioned only when they were considered important - and again the criterion on which importance has been judged has been a dynamic one, based if not on the actual ability of administrative mechanisms to change existing social relationships at least on their willingness to do so.

~~The~~ Portuguese occupation of S.E. Africa, one may infer from practically every account by contemporary writers, was not a matter which the Crown had planned in any kind of detail. From about 1530 and thereafter for over two centuries, it was settlers rather than governments that entered into agreements with African rulers, offered them goods or military help and received privileges or land in exchange. Attempts to impose sovereignty were sporadically made by the Crown but were never very successful. The first attempt to conquer the mines of the Monomotapa was made in 1569 but the enterprise ended in failure and disillusionment. The vain search for the silver mines donated by the Monomotapa to the king of Portugal in 1607, followed

but was abandoned in 1622. Schemes of colonisation undertaken in 1618, 1633 and 1675 met with some success and a limited number of families did settle in Zambézia, the area along the Zambesi River[1]; but Zambézia was and remained ~~most~~ first and foremost a land of free enterprise. As a prominent historian of Mozambique put it, the Portuguese Crown found it more rewarding to let settlers acquire lands by any means available to them and simply incorporate them into its dominion, following the principle that land belongs de jure to the king and de facto to the subject who has the use of it[2].

In the next chapter this process of nationalisation and the prazo system to which it gave rise will be discussed in detail; but for the moment it suffices to recall that, side by side with these stretches of land more or less permanently transferred to Portuguese subjects, there were areas about which one can only say that they were zones of influence of the Portuguese without in any sense belonging to them[3]. As these zones of influence became consolidated in Portuguese hands, further expansion took place into new zones which became new spheres of influence. This process of expansion repeated itself for over a century but was checked by the end of the 17th century by the similar activities of one of the chiefs at war against the Monomotapa; the Portuguese then lost a good deal of the territory over which they had held only precarious rights.

The administration which gradually developed during the 17th century and was still operating by 1750 took full account of the un-

(1) J. Teixeira Botelho, História militar e política dos Portugueses em Moçambique, Lisb., 1934, VolI, pp.323, 343.
(2) A. Lobato, Evolução administrativa e económica de Moçambique, Lisbon, 1957, p.193.
(3) They were the property of the povos livres (free peoples) whose sovereignty and independence were respected by the Portuguese.

even nature of Portuguese occupation and was entirely suited to local needs. There were captains for the areas where Portuguese sovereignty was fully exercised, the prazos, and 'private' captains[1] for the feiras[2] and bares[3] - the latter being subordinate to the former, who were representatives of the government.

In Crown lands early prazo-holders were recognised as having full jurisdiction over land and people, the idea being that since they were replacing the highest African traditional authorities they should have no fewer powers, or 'they would not be respected as they ought to'[4]. But sometime during the late 17th century or early 18th century the government decided to reserve for itself political and judicial authority over the white settlers (while jurisdiction over Africans remained with the prazo-holders) and these powers were transferred to the captains of the areas, to whom prazo-holders became subordinate. It is known that by 1750 all the existing prazos came under one or another of the three captaincies[5]. The captaincy of Quelimane extended between the Zambezi and the Lujenda rivers and comprised 15 Crown lands; that of Sena comprised 29 lands, mostly prazos south of the Zambezi near Sena but also some north of the same river; Tete was the largest captaincy and included 59 prazos in the neighbourhood[6]. Altogether, Crown lands extended all along the southern bank of the Zambezi, between the mouth of the river and Tete well

(1) Capitães particulares, a contemporary called them (Manuel Barreto, 'Informação do estado e conquista dos Rios de Cuama 11/12/1667', In Bol.Soc. Geografia de Lisboa, 4ª série, No.1, 1885, p.37)
(2) The small areas ceded by chiefs for mere purposes of trading.
(3) The concessions of mining rights which involved no granting of land.
(4) M. Barreto, op.cit.p.37.
(5) There was a Land Registry in which were mentioned the borders of the prazos, the rent paid, the "life" the prazo was in, and the title which justified possession (A. Lobato, op.cit., p.40).
(6) These figures refer to 1750 and are given by governor F. Mello e Castro in his 'Descripção dos Rios de Sena', Anais do Conselho Ultramarino, parte não oficial, série II, Lisbon, 1867, p.101.

in the hinterland, with occasional prazos north of the river[1]. In 1752 Portugal exercised full sovereignty over the territory of these captaincies only[2].

Civil and criminal jurisdiction and political power held by captains with authority over prazos was not unlimited: from their judgements appeals lay to the High Court of Goa and politically they were dependent on one of the two major authorities in the territory [3] - the captain-general or castellan (castelão) of Mozambique island and the lieutenant-general of Rios de Sena (Sena Rivers).

Outside Crown lands trade was carried out in areas granted by free chiefs for this purpose alone. Factories were built (protected by fortresses and a reduced number of soldiers) and the trade in a given area converged on them at given times of the year.

The most important of these feiras(markets) was Manica, for which an area of about three square miles had been granted[4], frequented by residents of Sena. It had its own capitão-mor (captain-major) with administrative, civil and criminal jurisdiction over the ten soldiers of the fortress as well as over traders in trading time. Other feiras included those of Zumbo and Mixonga[5].

(1) See map on page 16.
(2) A. Lobato, op.cit. p.42.
(3) Except, of course, in the case of lieutenant-general of Sena who was himself such authority.
(4) M. Galvão da Silva, 'Diário das viagens feitas pelas terras de Manica, 1788', in Anais do Conselho Ultramarino, parte não oficial, série II, Lisbon, 1867, p.46.
(5) Most marketing-places have disappeared without trace, but it is believed that both these fairs took place in the present district of Zumbo which borders with Zambia.

These feiras, of which the permanence varied, had apparently been the creation of traders who entered into agreements with local chiefs and paid them a licence[1]. Their captains too were traders, self-appointed men who were eventually granted recognition by the government and integrated into the hierarchy[2].

Besides the Crown lands (prazos on the whole, but a handful of short-term leases as well) and the feiras, there were also the bares, where Portuguese authority was weaker than anywhere else. Mining as well as trading took place at the bares; but contrary to what happened in the case of the feiras, the territory of the bares did not belong to the Portuguese who every year, in the rainy season, left their homes and took their caravans of domestic slaves to dig for gold. A licence was obtained from the local chief in exchange for cloth and the chief indicated the place where foreigners were allowed to mine.[3] He also sent a delegate (chuanga), a'kind of consul', to see that all was done according to rule. As late as 1831, when Major Gamitto travelled throughout the area, the procedure had not changed in either of the bares he visited; and all of them were in the Maravi and Cewa countries[4] north of the Zambezi, or in Manica, outside the lands over which the Portuguese exercised full jurisdiction[5].

(1) J. Teixeira Botelho, op.cit., Vol.I, p.146. A. Lobato, while not disputing that this was the Portuguese origin of the feiras, calls the readers' attention to the fact that the Arabs started the practice in Mozambique.
(2) A. Lobato, op.cit., p.45.
(3) Some areas, presumably the richest in gold, were closed to the Portuguese (Morais Pereira, Memórias , 1752, apud A. Lobato, op.cit., p.48).
(4) The distinction is Gamitto's, not mine; modern anthropologists consider the Cewa a branch of the Maravi.
(5) But in at least one case a mining concession facilitated subsequent incorporation into the Crown: governor Melo e Castro in his Descripção, 1750, indicates that one bare was at the time being judically sold in Tete.

Tradesmen spread into the gold areas with their slaves, attracted by the wealth of the bares. Both business and industry must have been important since it is known that in some bares (for example that of Mano in Marávia) there was a captain-judge and a vicar, both of them appointed by the lieutenant-general of the Rivers. For the bares of Manica no authorities were appointed, an understandable omission considering that there was a feira with its captain in the area.(1)

Over and above this flexible organisation of 'private captains' of feiras and bares (brought into being as the need arose, performing functions which appear not to have been standardised at all) there were the captains of the areas comprising the prazos (of whom the lieutenant of Rios de Sena was the most important) and the captain-general of Mozambique.

In theory the latter was the highest authority in Portuguese East Africa, but in practice it was somewhat difficult to determine the degree of subordination of the captain of the Rios since both captains were appointed in India and received instructions from the viceroy.(2) As to the viceroy himself the position was clear enough: between 1505 when the vice royalty of India was created and 1752 when ties between Portuguese East Africa and India were severed, he had over the immense area he governed the highest political, administrative, judicial and economic jurisdiction.

A Mozambican historian, A. Lobato, has argued that the captain of Mozambique was de jure the highest authority while the lieutenant of Rios was in fact the key figure, dealing with the most vital prob-

(1) A. Lobato, op.cit. p.47.
(2) But the captain-general corresponded directly with the king, while the lieutenant-general did not.

lems of the emerging colony and controlling the political and economic life of the hinterland from which all gold and ivory came. To this activity Mozambique was extraneous and too distant to be easily consulted[1]. In practice the governor or castellan of Mozambique (as he was also called) had jurisdiction only over his island and the stretch of coastal land facing it, as well as over the captains of Inhambane and Sofala and the few residents of Cabo Delgado. The rest of the territory over which any form of jurisdiction was exercised fell under the rule of the lieutenant of the Rivers (Tenete de Rios de Sena)[2].

The conflict between the two authorities came to a head more than once and the scale tilted in favour of one or the other according to circumstances. In the royal instructions of 1709 the lieutenant of Rios was considered to have the same jurisdiction as the captain-general of Mozambique. Between 1635 and 1688 the experiment was even made of separating Sena from Mozambique and making it depend directly on India. The captaincies under Sena were given the same status as those under Mozambique[3].

Until the 18th century appointments to the office of captain were made by the King. The practice was to appoint as captains men who were prepared to pay all the expenses of the fortress in their charge, in return for the profits of a trade which was their monopoly. Factors were appointed by the viceroy, while captains of feiras and bares as well as those of minor captaincies were appointed by either Sena, or Mozambique from among the inhabitants.

(1) See map on page 16.
(2) A. Lobato, op.cit., p.30.
(3) A. Lobato, op.cit.,pp.33 - 34.

Contemporary reports, both official and private, invariably refer to the past prosperity of Portuguese East Africa and the condition of 'decadence' in which it found itself in the late 17th and 18th centuries. Although some allowance should probably be made for what seems a natural tendency to praise the past to the detriment of the present, the considerable measure of agreement between critics indicates that the situation was in fact in need of reform. A brief look at the condition in which contemporary observers found the territory[1] may help to understand the steps taken by the government in 1752.

In the possessions furthest north along the coast, the Querimba islands, there were at the time only two residents from Portugal and one from India, all of them poverty-stricken. From these islands down to Mozambique island the long stretch of coast was either deserted or inhabited only by natives and no sign of Portuguese domination was to be found. Mozambique itself had important buildings, among which were the college of the Jesuits and the Royal Hospital, and an active trade; but by the end of the 17th century the number of Portuguese living outside the fortress was only fifteen, plus seventeen Indians. In front of the island the Portuguese owned a stretch of land of about four square leagues. Trade along the coast between Mozambique and Quelimane was more lively than elsewhere because ships of the captain of Mozambique traded in various ports of the area. Quelimane, a particularly unhealthy place, had by the middle of the 18th century thirty residents, of whom only two were Portuguese; its population was mostly Muslim and pagan but the village still had a church (built over a century ago) and a Jesuit priest. Sena had a fort, a church, the convent

(1) J. A. António da Conceição, 'Tratado dos Rios de Cuama', printed by C. Rivara in Ocronista de Tissuary, Goa, 1867, vol.II, pp.39 et seq., also Melo e Castro, op.cit., passim.

of the Dominicans and a number of primitive houses; these belonged to prazo-holders who either lived in their lands most of the year and visited the village occasionally or else had sub-leased their prazos and were living in more congenial places. Tete, on the Zambezi, was undoubtedly the most important village of Rios de Sena, although it had fewer inhabitants during the 18th century than a century before when a hundred Christian families of Portuguese and natives could be counted among its inhabitants. Sofala had only a handful of mulattoes and no Portuguese from the kingdom, the place being of no value since its port became silted up. Inhambane was the last coastal centre of Portuguese population and the most important as far as slave trade was concerned; but it was only inhabited by traders in ivory and slaves. Lourenço Marques, the future capital of the colony, was not even a village as yet but only a meeting place for bartering once a year, when the royal ship of trade was sent over to acquire ivory.

In the hinterland, important market-places (such as Luanze, Massapa, Dambarare and Mixonga) possessed about a dozen Christian families each, and a church, but by the time of the separation of Mozambique from India only a couple of these had not been completely wiped out(1).

Such was the position in 1752, when the king of Portugal was advised that, in order to regenerate the territory, separation from India must take place. A 'general captaincy' (capitania general) was created on the model of the captaincy of Brazil and put under the direct administration of the government of the kingdom.

(1) During the first quarter of the 18th century neighbouring chiefs took over Manica (later recovered) and the Bàrué where there were some wealthy Portuguese residents; as they carried on their private feuds the hinterland became too insecure and the Portuguese were forced to move into existing villages.

Legislation was passed to promote progress of the country. Royal instructions dated 1761 provided for simply and effective ways of collecting the rights and revenues of the state, for reorganising custom-houses, protecting agriculture,(1) repressing crime and disciplining troops and clergymen.(2) Above all, the attempt was made to invigorate trade by extinguishing all kinds of monopoly and making it free for all nationals; weights and measures too were reformed to prevent the abuses and frauds which were commonly practised. It was considered important that the same penalties should apply to all sections of the population irrespective of race and that justice should always be done and seen to be done. Health services were reformed. Mozambique, Quelimane, Tete, Inhambane, Sofala, and a few other villages became towns with local councils on the metropolitan model and this decentralisation too was expected to promote progress. Land tenure was regulated in the same terms applicable to the Brazilian captaincies.(3)

These measures did not, however, cause Mozambique to develop immediately. The European population was uneducated and corrupt, the government lacked the means to enforce its authority, shortage of transport made for isolation between the various parts of the colony. Of all overseas possessions only Brazil prospered, while in Angola and Mozambique the Portuguese were finding it difficult to adapt to climate and local conditions.(4)

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(1) The captain-general was to encourage Africans to open up new lands and plant the most useful species, as well as to keep cattle for work and food.
(2) The Jesuits (though not the remaining orders) were expelled from Mozambique and India, as they had already been expelled from the kingdom, by an order dated 2/4/1761.
(3) Particularly important was the Provisão do Conselho Ultramarino of April 7th, 1760, (see below p.84). After 1752 grants of land by the governor of Mozambique had to be confirmed by the king, whereas before 1752 the viceroys of India disposed freely of the land (J. Teixeira Botelho, História militar e política dos portugueses em Moçambique, Lisb., 1934, vol.1, p.367.
(4) J.T. Botelho, op.cit., vol.I, pp.368-9.

CHAPTER VI

THE PRAZO SYSTEM[1]

Origin; aim; legal nature; the Spanish encomiendas as a comparable institution.

Origin - In discussing the origin of the prazo system it is convenient to bear in mind that the question is twofold, involving Africans and Portuguese on the one hand and the Portuguese and their state on the other. On the first aspect enough has already been said: from the days of Portuguese expansion into the hinterland by the middle of the 16th century African chiefs made grants to the newcomers in exchange for cloth, arms, gunpowder or simply military aid.[2] On other occasions, perhaps less frequently, the private Portuguese trader made war ~~to~~ on an African chief and occupied his land.

It follows from the above that when the Portuguese Crown stepped into annex the new African lands for itself, these were already Portuguese in so far as they belonged, by a right of some kind or another, to Portuguese subjects. It follows too that sovereignty by the Crown became exercised not over a unified territory but over discontinuous stretches of land.[3]

(1) Many early Portuguese writers have given some evidence as to the way the prazo system was functioning in their days but until M.D.D. Newitt wrote his doctoral thesis on the Zambezi prazos in the 18th century (London, 1967, unpublished) there was virtually no study (apart from a good but short essay by Lobato) which attempted a serious analysis of the whole system. Newitt's approach is necessarily that of the historian which he is and not that of the lawyer.

(2) S. Xavier Botelho refers to various lands given by African chiefs and later turned into prazos. He enumerates as reasons, military help by the Portuguese, fear of the Portuguese and purchase. To the old prazos thirteen new ones were added in 1804 and 1807 by conquest (Memória estatística sobre os domínios portugueses na Africa Oriental, Lisbon, 1835, pp.139 et seq).

(3) Unification of the colony did not take place until the 19th century when systematic military occupation brought the whole territory under control.

The legal means by which the Crown claimed for itself the lands acquired by its subjects is not exactly known[1] but the eminent historian of Mozambique quoted on previous pages supports the thesis that nationalisation of land in South-East Africa was made en bloc by a provision of the viceroy of India. Those in possession of land were asked to assert their rights and have their situation legalised; titles (cartas de aforamento) were then issued in India[2]. It is known that during the first years of the 17th century some private individuals asked the king to confirm their right to the land they were occupying, thereby recognising that nationalisation had taken place[3]. Again, when in 1607 the Monomotapa ceded his gold and silver mines to captain Simões Madeira, the latter immediately transferred these rights to his king[4].

The earliest concession known to be granted in Mozambique dates from 1590: in the name of the king two lands were given to captain Simões Madeira for building a fort to prevent incursions from the Mocaranga.[5] Another document which has survived to our day (a royal ordinance (regimento) of 12/3/1618) instructed the captain of Mozambique to grant land and privileges to new settlers[6] in order to promote the increase in the size of villages and cultivation of land. But it is not clear under which system such concessions were to be explored.

(1) The commission of inquiry reporting in 1889 on the prazo system stated that it was unaware of the date when the first prazos appeared in Mozambique (Relatório da comissão encarregada de estudar as reform - as a introduzir no sistema dos prazos de Moçambique, Relator J.P. Oliveira Martins, Lisbon, 1889, p.6).
(2) A. Lobato, Evolução administrativa e económica de Moçambique,1752-1763, Lisbon, 1957, p.214.
(3) In 1613 the Dominicans asked the king to confirm rights over land granted them three years earlier by the captain of the area.
(4) J. Teixeira Botelho, História militar e política dos portugueses em Moçambique, Lisb. 1934, vol.I.,p.278.
(5) A. Lobato, op.cit.,p.175.
(6) The government was just engaging in a scheme of settlement for South-East Africa.

As far as is known only in 1609 was a grant of land made which was unmistakeably a prazo such as the kingdom had known for centuries and the future colony was to adopt as well.(1) The grant, which took the form of a perpetual contract of enfiteuse, was made to the Dominican friars 'for as long as the world shall be'.(2)

By 1667 the Jesuit Manuel Barreto was able to write that 'all ~~the~~ lands in the Rivers are under contracts of enfiteuse for three lives.'(3) In the 19th century 'all the territory of the prazos ' was Crown property, with the exception of very few villages 'which the settlers own unduly and can alienate by any means'(4).

Aim - What did the system of prazos aim at? As elsewhere in the Portuguese possessions the idea of rewarding services was one of the main considerations of the legislator. When the Crown granted the first prazos in Mozambique it did so exclusively to the widows and daughters of officers who had served in Africa.(5) In this particular

(1) Newitt considers that royal confirmation of title to land to Captain Simões Madeira dated 24th March 1612 'remains the outstanding piece of evidence both for the origin of the prazo system and for its early history' (The Zambezi prazos in the 18th century, London, 1967, unpublished, p.62). But the document which he quotes to support his view merely states that the lands of Inhabanzo were confirmed to Madeira, while the mines of gold, silver and other metals in the said lands were reserved to the king. It is apparently this duality which Newitt mistakes for enfiteuse. In enfiteuse there is a split in the right of ownership over a certain object whereas, in the instance quoted, different objects are ruled to belong to different subjects. In my view, nothing in the royal charter points to the fact that the grant was a prazo.
(2) A. Lobato, op.cit., p.177. As described in chap.IV, prazos could either be 'for lives' or perpetual.
(3) 'Informação do estado e conquista dos Rios de Cuama., 11/12/1667' in Bol. Sociedade de Geografia, Lisbon, 4ª série, No.1,1885,p.37.
(4) A.N.B. Villas Boas Truão, Documentos para a história das colónias portuguesas - Estatística da capitania dos Rios de Sena, Lisb., 1889, p.22. To the same effect, S.Xavier Botelho, Memória estatística sobre os domínios portugueses na Africa Oriental, Lisb.,1835,p.265.
(5)A.C.P. Gamitto, 'Prazos da Coroa em Rios de Sena', Arquivo Pitoresco, Vol.I, 1857-8, p.60.

respect the system owed much to that which had been practised in India. While in the Atlantic islands, Brazil and Angola the king granted donatárias to noblemen, in India he provided for their female relatives instead. Young women, orphans of noble families, whose fathers or brothers had died in the service of the king, sometimes widows too, were granted offices which would on marriage be occupied by their husbands, for so many years;(1) in other instances they were given as dowries the revenue of certain villages for one, two or three 'lives'; or the rents from certain engines (e.g. watermills) or of salt deposits or the profits arising from a voyage to Japan, China or even Mozambique.

In India the primary aim had been to reward services(2) and provide a solution for the numbers of women who had retired into charitable institutions. In Mozambique more was expected of the prazo system: it was hoped that it would become an effective means of peopling the country with Portuguese persons from the kingdom.

It will be shown in Chapter 10 that in South-East Africa neither prazo-holders nor authorities observed the rules which were originally devised and that all kinds of abuses infiltrated into the system. In the particular respect now under discussion, practice and theory again deviated from each other: prazos were not given exclusively to European women marrying European men from the kingdom (as was originally intended) but were granted to persons of all origins(3), mainly Asiatics. Various factors contributed to this

(1) Very important offices, such as captain of Mombasa and Damão and factor of Mozambique, were granted in this way (Germano Correia, História da colonização portuguesa na India, Lisb.,1952,i.a.vol.V, p.153).

(2)There appears to have been no instances of grantees in India being under the obligation to cultivate their land (A. Lobato,Colonização senhorial da Zambézia e outros estudos, Lisb.,1962,p.108.)

(3) Including African women (Official letter from the governor-general of Mozambique to the Minister of Overseas Affairs,28/7/1830, in E. Santana(ed.), Documentação avulsa moçambicana do Arquivo Histórico Ultramarino - Lisb.,1964, p.69).

effect: the enterprise required capital which only those connected with Indian trade possessed,(1) corruption on the part of authorities led them to grant land to whoever could best satisfy their private interests(2) and Portuguese persons from India by far exceeded in number those from the kingdom(3). From time to time the king was reminded that things were not being done as they ought to: in 1696 the missionary António de Conceição proposes that orphan women from the kingdom be sent over to Africa and given offices and land as dowries;(4) in 1750 it is governor Melo a Castro who puts forward an identical proposal.(5)

Legal nature - Being a pure contract of enfiteuse, the prazo of Mozambique partook of the legal characteristics described in

(1) A. Lobato, Evolução administrativa e económica de Moçambique, Lisbon, 1957, p.217.
(2) Inter Alia M.I.M. Vasconcelos e Cirne, Memória sobre a Província de Moçambique, Lisbon, 1890, p.26.
(3) An expert on Portuguese colonisation in India writes: 'All the families from the kingdom who at different times during the 16th century went to Mozambique had to be taken over to India due to high mortality (...) The Government of Portugal, recognising the impossibility of achieving widespread settlement in the area of Rios de Sena with Portuguese persons from the kingdom and considering that colonisation with natives from India would not be convenient, decided to colonise Mozambique with families of Portuguese descent living in India'. And he adds: 'There can be no doubt that from 1678 onwards such colonisation was directed and financed by the state without much enthusiasm on the part of the families themselves. Until at least 1754 (a royal ordinance of that date is availble) the sending of Portuguese people from India to Mozambique continued to take place' (G.Correia, op.cit., vol.IV, p.683).
(4) 'Tratado dos Rios de Cuama, 1696', printed by C. Rivara in O cronista de Tissuary, Goa, 1867, p.45.
(5) 'Rios de Sena, sua descripção desde a barra de Quelimane até ao Zumbo, 10/8/1750' in Anais do Conselho Ultramarino, parte não oficial, 1859 - 62, p.110.

Chapter IV. Land was granted by the king to the prazo-holder[1] either for a certain number of lives or perpetually; some prazos were renewed on expiration of the lives for which they had been granted while others returned to the Crown[2]. The prazo-holder[3] was in all cases under the obligation to pay a rent (foro or cânone) and to cultivate the land (even if only in a primitive way),[4] partition of the prazo was always forbidden[5]. These were common clauses in contracts of enfiteuse as the kingdom had known them for centuries. To them, two new developments had been added in India[6] which were applied in Mozambique. In the first place, prazos were to be given to women only (to be married to Portuguese men of the kingdom)[7] and, secondly, were to devolve in the female line.

(1) I could not find that the term prazero used by Duffy throughout his book (Portuguese Africa, Cambridge, (Massachusetts) 1959, especially Chapter IV) was or is used by Portuguese writers either past or present. It certainly is not a legal term (the Civil Code, 1867 merely refers to foreiro and enfiteuta). It does not appear to agree with the structure of the language either(having, instead, a Spanish flavour about it).
(2) The Crown decided whether or not the prazo should continue in possession of the family in question.
(3) This was paid in gold dust and always in two distinct parts: one corresponded to the foro proper, the other to the dízimo (the part belonging to the church -) (A.C.P. Gamitto, 'Prazos da Coroa em Rios de Sena' in Arquivo Pitoresco, Vol.I,1857-8,page 65).
(4) It sufficed that traditional African agriculture be practised (A. Lobato, op.cit., page 217).
(5) See e.g., 'Carta Régia de confirmação aos jesuítas de terras na Zambézia, 2/4/1746', in Anais da Junta de Investigações do Ultramar, Lisb.,1954, VolIX,p.363.
(6) But, contrary to what happened in Mozambique, in India the enfiteuse contracts tended to refer to movables (rents of various kinds) rather than to immovables; as was pointed out before, under the present law movables cannot be the object of contracts of enfiteuse (prazos).
(7) The reinóis or men of the Reino (kingdom).

Again, none of these provisions was respected in Mozambique.

The question of the powers of the enfiteuta or prazo-holder of Mozambique is undoubtedly the most difficult of all which arise in connection with the system;[1] and the most important single reason why this should be so derives from the confusion prevailing at all times between the de jure and the de facto powers of the enfiteuta. Such confusion was obviously the result of the conditions under which the system had been brought into being; as an observer saw it, 'it is reasonable to assume that the one who conquers through his own effort does so for his own benefit'.[2]

For well over a century the Portuguese Crown did not interfere with whatever rights were being exercised by prazo-holders and accepted the fact that they were holding unlimited jurisdiction. Titles of enfiteuse (said the Jesuit often quoted in 1667) stated that prazo-holders were to have in their lands 'the very same powers and jurisdiction held by the chiefs from whom they conquered them', and he added 'they are like potentates in Germany, they can pass any sentence of whatever kind, they may kill, make war and impose tributes; many atrocities are probably committed on this account but they (the prazo-holders) would not be respected by their subjects (sic: vassalos) as they should, had they not possessed the powers of the fumos to whom they succeeded'.[3] Another keen student of Zambezian life, E. Vilhena, provides a lively description of 17th century feudalism in the prazos, when landlords assaulted and robbed travellers, exercised droit de péage in roads and rivers as did their mediaeval counterparts and kept for themselves as a matter of right the ivory collected in their lands.[4]

(1) See below p.135.
(2) Apud. A. Lobato, op.cit.,p.200.
(3) M. Barreto, op.cit., p.37.
(4) Questões coloniais, Lisb.,1910, vol.II, p.529.

As to the obligations which were the consideration for the absolute powers of jurisdiction granted (or recognised) to prazo-holders during the 17th century, they can be summarised in one single duty, again of a feudal nature[1] that of calling the men living in the prazo (either freemen or captives) to war or to 'any other service for the common good' whenever it was so required by the state[2].

The prazo system was thus basically a contract in private law - the contract of enfiteuse described in Chapter IV with peculiarities, common to Portuguese India, as to mode of succession and sex of the grantee - to which some public rights had been added. In the field of public law prazo-holders were in a position similar to that of the donatários of the Atlantic islands, Brazil and Angola, in that they always had some civil and criminal jurisdiction: at one time (as Barreto states) full jurisdiction in their own right, later a restricted jurisdiction as representatives of the government[3]. As in the case of the donatárias, it was the purpose of the grants to reward services and to promote European settlement.

But analogy with the donatárias stops at this point. The captains of the Atlantic Islands, Brazil and Angola at all times held absolute jurisdiction granted them by the king, and there can be no doubt that the latter divested himself of important powers of which he disposed in their favour. Under the prazo system, on the other hand (and excluding for the moment the days before the setting up of an administration), this was so only because enfiteutas took the

(1) In the case of India, G.Correia mentions at least three instances in which the prazo-holder was under the duty to keep and maintain 'one soldier and one Arab horse' (op.cit., Vol.IV, pp.259,272 and 717).
(2) M.Barreto, op.cit., pp.37.
(3) From 1890 onwards (decree of the 18th November) it was the law that the prazo-holder was an 'agent of the authority' (agente da autoridade), that is, someone who exercised public powers not in his own right but as a representative of the government. As, however, supervision was practically inexistent, enfiteutas were allowed to continue to commit their arbitrary actions.

law into their own hands; the administration which was created was intended to supersede the enfiteutas as supreme authorities, though in practice this aim was seldom achieved.(1)

The second respect in which donatárias and prazos differ derives from the fact that in the former case the jurisdiction of the captain was primarily exercised over Portuguese persons from the kingdom who had moved into his captaincy, whereas in the latter case the subjects were natives with no acknowledged rights. While the European settlers of the donatárias could not be required to pay any taxes(2) or ~~to~~ perform any services not specified in a royal charter (carta de foro or foral), such protection was totally absent in the case of Africans who were forced to pay a tribute for as long as the system lasted. This was, in fact, the one legal power which remained firmly in the enfiteuta's hands and eventually became the raison d'être of the system. For most prazo-holders of Mozambique collection of taxes became an end in itself; and the legal set-up permitted them to be simultaneously rich and idle and more parasitical than had ever been the case in the history of Portuguese colonisation except for India.

Legal Reforms(3)

The need to regulate the prazo system more strictly than had hitherto been the case soon made itself felt; Lobato indicates that the Crown made its first attempts at transferring to itself the sovereign powers held by the settlers in the beginning of the 18th century. A fairly elaborate administration was already operating in the

(1) A. Lobato, op.cit., p.185.
(2) Except the dízimo (tithe) not to the captain but to the Order of Christ.
(3) M.D.D. Newitt has rightly noted that it is strange that the Portuguese Crown did not seriously consider abolishing the system before the 19th century when it seized every opportunity that offered to end the rule of the capitães donatários in Cape Verde islands, S.Tomé, Angola and Brazil (the Zambesi prazos in the 18th century, Ph.D. thesis, London, 1967, unpublished, p.133). Undoubtedly, practical considerations prevailed over principles in the case of East Africa.

area, constituted by captains of various ranks who could take over the powers exercised by the enfiteutas. That such efforts were to a great extent fruitless was proved by a number of witnesses, among them Lacerda e Almeida who travelled throughout the area in 1798.(1)

In 1760 steps were taken(2) to restrict the size and ownership of prazos: these should not exceed three square leagues or a quarter square league, depending on location; religious organisations were not to succeed.to prazos(3) and could not be exempted from any charge owed by lay prazo-holders.(4)

The reader may already be under the impression (which will only be fortified as this study proceeds) that practically no law which purported to regulate the prazo system was ever enforced. In no instance was this more so than in the case of the Provisão of 1760. Authors writing at different dates and as late as the 20th century, after many laws to the same effect had been passed, refer to the immense size of the prazos, often extending for as many as 8 days' journey or more(5). As Lobato has pointed out(6), the provision was inept in

(1) He refers to the peculiary kind of justice of prazo-holders who 'kill without mercy, cut ears and have private prisons'(Travessia da Africa, Lisbon, 1798).
(2) 'Provisão do Conselho Ultramarino, 3/4/1760' in F. Santana (ed.,) Documentação avulsa moçambicana do Arquivo Histórico Ultramarino, Lisbon, 1964, document 107/5, p.72.
(3)Old evils were thereby expected to be avoided. In e.g. Cape Verde islands and São Tome e Príncipe a large proportion of the total land available was in the 17th century permanently devoted to pious purposes and could not be disposed of (Rui Ulrich, Economia Colonial, Coimbra, 1910, p.372); in Portugal herself until at least the 16th century about one-quarter of all arable land belonged to monasteries and religious orders (História de Portugal, ed., Damião Peres, Barcelos, 1929, vol.III, chapter III).
(4)This applied to those religious orders which were already in possession of land at the time of the Provisão of 1760.
(5) I.a.,A.A.Caldas Xavier, A. Zambézia, Nova Goa, 1888; E.Bettencourt, 'Refutação da 'labour question' de Carl Wiese', in Relatórios e Informações, anexo ao Boletim Oficial, 1910; P.A. Sousa e Silva, Distrito de Tete, 1927, p.49. Lord Lugard visited a prazo "Twice as large as the Netherlands" (F.D.Lugard, The rise of our East African Empire, Edinb., Lond.,1893, vol.I. p.30).
(6) Colonização senhorial da Zambézia e outros estudos, Lisbon,1962, p.111.

that it did not take into account social and economic conditions prevailing in the area. Prazos were not, acquired for their own sake, as the Provisão appeared to assume, but as a means to achieve status[1] and to finance costly trading expeditions, frequently sent to distant lands. Besides, a man had to be powerful enough to defend himself against his enemies - Europeans or half-caste rivals, unfriendly chiefs and their people - as no government was ever in a position to protect him. Only by occupying a large area, and by no other means, could a prazo-holder collect enough tribute and have enough men to engage in his trade and carry out his private wars.

A second provision by the same Council (Conselho Ultramarino), dated 25th February 1779, instructed prazo-holders to live in their lands.[2] But, as had been the case in India, it became a feature of the system as time went by that enfiteutas, having accumulated larger and larger prazos, made a living out of the difference between the amount of tribute collected from Africans and the relatively insignificant rent paid to the state[3], and did not cultivate their lands. In the 19th century there were numerous instances of absentee landlords living in the towns of the colony or as far away as Paris[4].

(1) For example, the office of captain of Zimbahoe, according to a contemporary, was always vested in a settler with a large number of African dependents, as this made him 'more respected'; the number of soldiers in the garrison (25) was quite inadequate, he adds (apud A. Lobato, Evolução administrativa e económica de Moçambique, Lisb., 1957, p.204).

(2) Similar provisions applied in the East: in 1611 the king of Portugal ordered enfiteutas in Ceylon to reside in their villages or else alienate them (failing which, they would be disposed of) (Documentos remetidos da India, publ. by Academia das Ciências de Lisboa, document 213, 4/12/1611, p.115). Also, G. Correia, História da Colonização portuguesa na India, Lisbon, 1952, vol.IV, pp.272, 259.

(3) Precisely the same situation is described by G. Correia for India as being 'common practice' on the part of enfiteutas (op.cit., vol.V, p.123.)

(4) A.C.P. Gamitto, 'Prazos da Coroa em Rios de Sena' in Arquivo Pitoresco, Lisbon, 1857 - 58, vol.I, p.66; F.G. Almeida d'Eça, História das guerras no Zambeze, Lisbon, 1954.

On the 29th March 1783 a royal ordinance provided that no person should hold more than one prazo, unless this yielded so little revenue that the purpose of the concession would be defeated. This provision was not executed either.

It was during the 19th century that attempts at radically changing the prazo system followed each other relentlessly. Reference shall be made to them in due course.

The Spanish encomiendas

The Spanish system of encomiendas has sometimes been compared to that of the prazos[1] and arose, as was the case with the Portuguese institution, from local needs rather than from a deliberate act of policy on the part of the Crown. In fact the Spanish Crown only reluctantly gave its assent to the system which was first instituted in the Caribbean Islands in the early 16th century; later, when Mexico and Peru were conquered, it tried to oppose its introduction in the new lands.[2] In 1710 the encomiendas were abolished, at least in theory, and replaced by the corregimientos which incorporated Indians into the Crown.

Basically the system of encomiendas consisted in allotting to Spanish colonists a number of Indians[3] of a given area whose services could be used for whatever purpose - more commonly to work in the mines or farm in the settlers' lands. From a legal point of view encomiendas were royal donations made to conquistadores as a reward for services - and in this respect the system reminds one both of the Portuguese donatárias and the prazos. It had a fiscal aim as well since the encomenderos (the grantees) were to pay the treasury a peso of gold a year for each Indian allotted to them. And as the spreading of religion was of paramount importance in those days, the obligation to convert one's natives to Christianity was also inherent in the grant.

(1) J. Silva Cunha, Administração e Direito Colonial, Lisbon, 1955, p.184.
(2) Royal Instructions to H. Cortes dated 1523 (História de América, ed. A. Ballesteros, Barcelona 1959, vol.XIV, p.73).
(3) A Royal Ordinance of 1509 provided that officials appointed by the King should have 100 Indians, other noblemen from 60 to 80 according to their status, and married farmers 30 (op.cit., p.67).

Encomiendas were given for two lives in the Caribbean and for three in Peru and Mexico, after which time they returned to the Crown and were granted to a new encomendero. Women could succeed to encomiendas although it is not clear whether they could be granted them in the first place(1). Encomiendas were indivisible and inalienable; Indians could neither be removed from them nor leave them of their own accord. Minor offences among natives were adjudicated by their own chiefs and more serious cases by Spanish judicial authorities. Although attempts were made at various stages by encomenderos to acquire jurisdiction over natives, the Spanish Crown firmly refused to grant them such powers(2).

The lasting tug-of-war between Spanish Crown and clergymen on the one hand and colonists on the other led in 1524 to the replacement, at least in law, of personal services by a tribute. In the first quarter of the 18th century the system was altogether abolished(3).

Similarities and differences between encomiendas and prazos should now be apparent. Both systems developed as a response to local pressure and were used as a means of rewarding services. Donations were in both cases given for 'lives' and involved the cession, on the part of both Crowns, of an important right of sovereignty: the right to collect tributes (in kind or in labour) from its subjects. But the Portuguese prazo-holder of the 16th century held wider powers because he had over natives that jurisdiction which was invariably denied to his counterpart in Spanish America. More important from a strictly legal point of view is the fact that the Portuguese prazo-holder was fundamentally a landlord while the Spanish encomendero was only a

(1) Op.cit., p.86.
(2) Except for Mexico for a short period of time after 1526 (op.cit., p.73).
(3) Op.cit., p.79.

tribute-collector. The lands of American natives remained their own; and the fact that encomenderos could acquire land for themselves (by donation or purchase or even simple expropriation) had no bearing on the rule that grants of land were not part of the donations of an encomienda.(1)

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(1). Op.cit., p.90.

CHAPTER VII

POLITICAL, SOCIAL AND CULTURAL CONTACTS BETWEEN THE PORTUGUESE AND THE AFRICANS

Under this somewhat ambitious title it is hoped to provide a picture of the different relationships between the two races which prevailed in the period under discussion. If one cannot accurately speak of political domination in South-East Africa by the Portuguese in those days, it is nevertheless apparent from contemporary records that they did (whenever they were powerful enough to do so) interfere in African politics, often with drastic consequences. In other instances mere social contacts took place, free from political interference, as was the case when the Portuguese and the people of independent chiefdoms engaged in trade. Finally the prazos, where Africans and Europeans lived side by side, provided the one instance in which one can speak of cultural contact between the two races. Some overlapping between these areas of influence is inevitable but the evils of artificially delimiting their scope were thought to be minor as greater clarity of exposition was achieved and the basic picture was not thereby distorted.

There can be no doubt about the importance of Portuguese presence on the balance of power between the kingdoms with which they came in contact. In some cases as a result of deliberate action on their part, in others by the fact that their mere presence promoted dissensions, the role played by the Portuguese on African political life since their arrival in South-East Africa cannot be ignored.(1)

(1) In some instances, African populations themselves sought Portuguese protection , as was the case with Africans in Quelimane area who dreaded their cannibal neighbours (M.Guillain, Documents sur l'histoire, la géographie et le commerce de l'Afrique orientale, Paris,1857, p.457).

In 1667 Barreto reported that the Monomotapa had ruled over the whole of the kingdoms of Botonga and Quiteve before the arrival of the Portuguese; since then the Botonga had fallen into Portuguese hands and the king of Quiteve had rebelled against his emperor. In another kingdom formerly subject to the emperor, he adds, the Portuguese 'made and unmade kings as they pleased'.(1) In Manica, where most of the gold mines lay, Portuguese influence must have been considerable since the Portuguese owned 'more lands than the (African) king himself'.(2)

A later writer, the missionary Conceição, supports the above assumption. 'The territory of Manica, he reports, consists of a number of kingdoms divided among a handful of chiefs, all of whom have pledged allegiance to the Monomotapa; in fact they owe it to the Portuguese to a much greater extent since no one is a king unless we make him so. When we feel he does not deserve to be in office we deprive him of it as well as his life, and the emperor of the Monomotapa has no say in any of these things'.(3)

Interference with local politics was not restricted to minor kingdoms but affected the Monomotapa himself. According to Conceição, emperors were recognised by their subjects only when they had been approved of by the Portuguese. They had to be Christians or at least 'water had to be poured down their heads by a priest' before they took office.(4) The ruling Monomotapa, Dom Pedro, the missionary alleged, had been put in government 'by the force of our arms'.(5)

(1) Manuel Barreto, 'Informação do estado e conquista dos Rios de Cuama', Boletim da sociedade de Geografia Lisboa, 4ª Série, No.1, 1885, p.46.
(2) M. Barreto, op.cit., p.48.
(3) António da Conceição, 'Tratado dos Rios de Cuama (1696)' printed by Cunha Rivara in O Cronista de Tissuary, Goa, 1867, p.45.
(4) According to A.C.P. Gamitto, this was still the position in Báruè in 1830 'Sucessão e aclamação dos reis do Báruè', Arquivo Pitoresco, vol.1, 1857-8.
(5) Op.cit., p.69.

Almost a century later an incident was reported by a contemporary writer which illustrates that the Portuguese presence, even when passive, had its repercussions on African political life. The African king of Quiteve, who ruled over an area adjacent to Portuguese Crown lands, had ordered eleven gold mines to be opened. This was found objectionable by his elders on the ground that it might arouse Portuguese greed; the king was murdered and the mines closed.(1)

These are general comments on the kind of situation which tended to develop whenever the Portuguese were sufficiently numerous or sufficiently powerful to influence political matters. In chapters I and IV more specific points regarding the transfer of jurisdiction from certain African chiefs to Portuguese subjects were discussed and need not be repeated here. Only the situation within the prazos has not been described and may usefully be looked into at this stage.

African potentates of the Monomotapa and the Maravi countries with whom the Portuguese came into contact ruled over territories which were divided into districts, each governed by a mambo; subdivisions of districts were governed by fumos.(2) On the arrival of the Portuguese, mambos, either because they were defeated in wars or because they thought it to their advantage to do so, started to transfer their lands to the newcomers. Fumos thus ceased to be subordinate to mambos and came under Portuguese rule; tributes formerly paid to mambos became payable to prazo-holders.(3)

While it is true that such transfer of power as took place from Africans to Europeans involved no splitting-up of existing political or territorial units(4) the changes produced were nevertheless of con-

(1) Inácio Caetano Xavier, 'Noticia dos domínios portugueses na costa da Africa Oriental (26/12/1758)', in A.A. Andrade (ed.), Relações de Moçambique setecentista, Lisbon, 1955, p.155.
(2) Nhacuaua was their title in Sena area.
(3) A.C.P. Gamitto, 'Prazos da Coroa em Rios de Sena', in Arquivo Pitoresco, vol.I, 1857-8, p.60.
(4) Gamitto specifically states that when these lands passed on to the Portuguese 'they kept the same names and borders...and became prazos of the Crown' (op.cit., p.62).

sequence for traditional political life. For one thing, prazo-holders exercised their discretion as to which fumos were to be kept in office and which were to be removed. If there was no natural successor to a fumo, the prazo-holder would approach any strange fumo 'with a large following' and invite him to take the place of the deceased or deposed chief.(1)

Again, according to Gamitto, the jurisdiction and powers of adjudication of fumos were in theory maintained but were in effect reduced by the presence of agents of the prazo-holder (chuangas) in neighbouring villages as supervisors to the fumos. Other agents of the enfiteuta (mucazambos) settled at various points along the borders of the prazo and took charge of its security.(2)

Some thirty years later another observer had the following comment to make on the African political scene: 'in some prazos there are still chiefs; in others they rebelled against the prazo-holder and are now serving sentences'. On the whole, the author refers to territories ruled by chiefs as opposed to prazos; but he adds that 'it is not rare to find some chief or other in a prazo.'(3)

As to mambos, their powers were transferred to enfiteutas; the latter tried cases on appeal but Gamitto comments 'that Africans seldom appealed from the fumos' sentences to the prazo-holders, which appears to indicate that perhaps mambos continued to fulfil their previous role, unrecognised by the Portuguese.

Any account of the life in the prazos will not be complete unless it considers the abuses of power and the extortions of the enfiteutas as much as the jurisdiction they were supposed to have taken over from

(1) A.C.P.Gamitto, op.cit., p.62.
(2) Op.cit., p.61.
(3) J. Almeida da Cunha, Estudo àcerca dos usos e costumes dos banianes, bathiás, parses, mouros, gentios e indígenas, Moçambique, 1885, p.91.

African chiefs. That will be more conveniently studied later in this chapter when dealing with cultural contacts between the two races within the prazos. For the moment a second type of relationship between Europeans and Africans will be looked into, namely those contacts which I have called social and involved no political domination or interference.

Trading relations were the first kind of relationship that the Portuguese cared to establish with Africans, since to trade was the raison d'être of their presence in South-East Africa. From about 1530 they started to penetrate the hinterland along the Sofala and, somewhat later, the Zambezi rivers; by the late 16th century full territorial jurisdiction had already been granted by a number of chiefs and was in the process of being consolidated in Portuguese hands in some other areas.(1) During the 17th and 18th centuries this process of expansion was checked by African wars and the Portuguese lost many of the zones of influence in which they were trading previously.(2) Henceforth they were restricted to the prazos, where their roots were strongest, and in some cases even these had to be abandoned. From a report dated 1766 we learn that civil wars broke out in the Monomotapa country in 1759 and caused extensive devastation, leading hungry populations to invade the Portuguese lands; as a result settlers moved to the left shore of the Zambezi, to the Maravi country, where they either bought or conquered lands.(3)

(1) See ante, Chapter I.
(2) A report from 1763 states that a number of mines in the Monomotapa country had been abandoned some 80 years before because of the wars against Xangamira (Dionísio de Melo e Castro, 'Notícia do Império Marave e dos Rios de Sena' in Anais da Junta de Investigações do Ultramar, Vol. IX, I, Lisbon, 1954, p.123.
(3) Baltazar Pereira do Lago, 'Ilustração que o governador deu a quem lhe suceder no governo', in A.A. Andrade, ed, Relações de Moçambique setecentista, Lisbon, 1955, p.331.

From this and other contemporary reports it would appear that the Maravi country became for the Portuguese of the 17th and 18th centuries what the Monomotapa country had been for their forefathers of the previous century - a land to trade in and, to a lesser extent, a land to settle in.

It is not at all clear which were the borders of the Maravi empire and where did the neighbouring kingdoms of the Makua and the Yao start at various times. In the days of Barreto the Maravi were known to dominate the Makua, the Bororo and many other peoples and their empire was estimated to stretch westwards for two hundred leagues, from Quelimane in the coast, and to extend as far north as Mombasa. The friar adds that Portuguese traders from Quelimane, Sena and Tete converged to the Maravi country and that the main goods transacted were iron, slaves and African cotton cloth (maxilas).

Active trade also took place between the Portuguese and the Yao. Yao trade during the 18th century both in coastal ports and in Central Africa, was the subject of a recent doctoral thesis.(1) Its author found that the Yao travelled to Kilwa before 1698 but that after that date they shifted most of their trade from Kilwa to Mozambique. Later, trade with Mozambique was prejudiced by unrest among the Makua; this, together with the fact that Kilwa began to revive after 1750, made most Yao re-channel their trade back to that port.(2)

Pure trading relations appear to have prevailed between the Port-

(1) E.A.Alpers, The role of the Yao in the development of trade in East Central Africa, 1698 - c. 1850, London 1966 (unpublished).
(2) The Yao have remained great travellers to the present day. Those settled in Portuguese territory still make annual trips to Quelimane in the coast, some 400 miles away from their place of residence near Lake Nyasa, to sell their tobacco at more lucrative prices than are paid by local markets (see below, p. 263).

-uguese and the Yao peoples since the late 17th century.[1] There is no reference in contemporary literature to Europeans travelling to the Yao country to trade and to all accounts it was the Yao who brought their products to the coast to Portuguese markets. Neither is there any indication that the Portuguese ever conquered or bought lands in their country before ~~the~~ last century. Until the 1890's when repeated military expeditions were sent against chief Mataka[2] with indifferent success, the Yao remained free from any contacts with the Portuguese except for those arising from annual trade as described.[3]

In the Maravi country[4] the position was quite different. By the middle of the 17th century the Portuguese were travelling to Maraviland to trade and a century later the same practice still prevailed - and was regretted by governor Melo e Castro who would rather have the Maravi come to Portuguese markets instead[5]. By the middle of

(1) R. Oliver and J.D. Fage consider that Portuguese penetration into the African mainland, both in Angola and Mozambique, was 'almost wholly injurious to the African societies with which they came into direct contact. The presence of the Portuguese was an advantage only to those who were fortunate enough to be a little removed from them'. Trade, the authors believe, provided valuable stimulus to those taking part in it as ideas were exchanged along with goods and discoveries transmitted from one set of men to the other. Through opening new long distance trade routes the Portuguese placed some of Africa in touch with the outside world and different African societies were also placed in touch with each other (A short history of Africa, Penguin Books, Middlesex, 1962, p.133).

(2) Chief Mataka and the majority of Yao of Portuguese territory occupy the district of Vila Cabral (see maps on pp. 196, 198).

(3) The Yao came to the coast in May and stayed until about October, that is, the whole of the dry season; the Makua, who lived nearer to the Portuguese, traded all year round (S. Xavier Botelho, Memória Estatística sobre os domínios portugueses na Africa Oriental, Lisbon, 1835, p.372.

(4) The present districts of Macanga and Marávia (see maps on pp. 196,198).

(5) Francisco de Melo e Castro, 'Rios de Sena, sua descripção, desde a barra de Quelimane até ao Zumbo', in Anais do Conselho Ultramarino, parte não-oficial, 1859 - 62, p.114.

the 18th century the Portuguese were holding lands in the Maravi country. A report dated from 1763 indicates that they owned fifty-one lands.(1) A royal ordinance of 1771 ordered demarcations to be carried out in Maravi territory; lands were to be given to grantees on condition that they should 'cultivate ~~them~~ and defend them'(2). Thirteen more prazos were conquered in the area in 1804 and 1807.(3)

Whether one was a prazo-holder in the Maravi or the Monomotapa countries or whether one resided in one of the villages, the main activity as well as source of income for the Portuguese was always to trade. From the end of the 17th century this meant ~~most~~ first and foremost to trade in slaves(4). Portuguese residents sometimes sent as many as ten or twenty expeditions a year to the bush, their slaves and servants carrying cloth to be exchanged for more slaves(5). In most cases there was nothing secret about such transactions. Local rulers were approached and after a brief investigation as to the quality of the cloth offered and the readiness or otherwise of the slave buyer to pay high prices, a slave market was set up. It was an accepted fact for

(1) Dionísio de Melo e Castro, op.cit., p.143.
(2) Preference was to be given to those who owned no other land. Certain areas were reserved for orphan women without dowries. Prazo-holders were obliged to declare that they would accept in their lands any families sent to the territory by the King of Portugal and give them shelter; these settlers would pay the prazo-holder half the tribute (Mussoco) paid by Africans on the same land ('Alvará sobre Maraves (28/2/1771) ', in J.Almeida da Cunha, op.cit.,p.131).
(3) It will be recalled that there were also a number of Bares (mining concessions involving no rights over land nor people)in the Maravi country. Mano had the best gold but there were at least half-a-dozen other bares in the 18th century in the area. A tribute was paid to the local ruler who indicated the place where gold could be dug out (I.C. Xavier, op.cit., pp.163 and 197).
(4) Angola was the supplier of slaves for the estates of Brazil; as it became partly occupied by the Dutch, the king ordered slaves to be shipped from East Africa (1645).
(5) A.C.P. Gamitto, 'Escravatura na African Oriental', in Arquivo Pitoresco, 1859, vol.II, n.47 and 50, p.397.

Africans that certain types of crime under customary law made the guilty man liable to be sold in slavery; creditors, too, might sell debtors or their relatives as a form of redress[1]. On the Portuguese side, moral and religious concepts prevailing in Christian Europe at the time would have it that a man should not be enslaved unless he was captured in a 'just war' but this principle was by no means generally respected[2].

The abuse of trade (in particular slave trade) was repeatedly denounced by 19th century writers as the most important single cause for the decadence of the territory. 'There is not a single person who is not involved in trading', reported someone in 1835[3]. In 1889 the same comment was made by governor Truão, who added that the easy profits to be made with trade had led to the abandonment of agriculture and were responsible for the complete idleness of enfiteutas.[4] Slaves in Sena were twenty times cheaper than in America[5] and from the port of Quelimane alone as many as fourteen thousand were exported in one year[6].

No more need be said about slavery at this stage. When dealing with cultural contacts between the two races within the prazos the very disturbing fact that prazo-holders were led by their greed to sell into slavery even those Africans who were settled in their prazos will be looked into.

(1) As a result of famines or because they had lost their relatives some people offered themselves as 'domestic slaves' to men of some standing (and became their clients rather than proper slaves). Instances of this are given by Livingstone (the Zambezi and its tributaries, Lond.1865, pp.49-50) and L.P. Mair (Primitive Government, Penguin Books, Middlesex, 1962, pp.110-3).

(2) A. Pinto de Miranda, 'Memória sobre a costa de Africa (1766)', in A.A. Andrade (ed.), Relações de Moçambique setecentista, Lisbon, 1955, p.253.

(3) S. Xavier Botelho, op.cit., p.372.

(4) A.N.B. Villas Boas Truão, Documentos para a história das colónias portugueses - Estatística da capitania dos Rios de Sena, Lisbon, 1889, p.p.11 and 20.

(5) A.N.B. Villas Boas Truão, op.cit., p.17.

(6) A.C.P. Gamitto, 'Escravatura na Africa Oriental', Arquivo Pitoresco, Lisbon, 1859, vol.II, n. 47 and 50, p.399.

Commentators from the end of the 17th century to the early 20th[1] refer to the abuses and extortions of enfiteutas - their arbitrary justice as well as their use of force to compel Africans to sell their agricultural products to their landlords and buy from them the articles they might require.

While one cannot dispute the authenticity of facts reported by reputable observers over a span of time of more than two centuries, one is strongly tempted to believe that conditions in prazos probably deteriorated as time went by. The African settler of the 17th or 18th century could always choose to move from one prazo to another[2] or to settle in the country of an independent chief if life in his own prazo became too unpleasant. Reference to such escapes are not lacking in Portuguese contemporary literature and the practice must have acted as a deterrent to the more tyrannical enfiteutas.

Secondly, one must bear in mind that for centuries the prazos by no means provided the main source of income to enfiteutas. Exploitation of the African inhabitants of a prazo was not a sine qua non condition of the system because the latter was essentially outward looking: the great source of income of an enfiteuta was the trade engaged in, on his behalf, by his domestic slaves in foreign lands. Mossambazes (usually one's slaves[3] but occasionally free men hired for the purpose) took cloth and beads to the hinterland, in expeditions which took months and sometimes years, and brought back ivory, gold or

(1) M. Barreto, op.cit., p.37; Ernesto de Vilhena, Questões coloniais, Lisbon, 1910, vol.II, p.547.
(2) Given the rivalries prevailing between prazo-holders, a fugitive African was seldom returned to his previous landlord.
(3) M.D.D. Newitt has rightly pointed out that the Zambezi slave was not as much a chattel as a client. His legal position did not correspond to that of the American slaves; slavery in the latter case had an economic aim, while in the Zambezi area only a small percentage of the so-called slaves were employed and then only in trading and mining some months of the year (The Zambezi prazos in the 18th century, Ph.D. thesis, London, 1967, unpublished, pp.204 and 213).

slaves. A second source of income for the prazo-holder arose from sending once a year in the rainy season a party of African slaves[1] to the mining concessions (the bares) in search of gold. By the middle of the 18th century the bares of the Maravi country were almost exhausted[2] but as the expense with the upkeeping of slaves was nil, the enterprise was still worthwhile[3].

It was by no means unusual for an enfiteuta to own hundreds of slaves[4]. When this was the case only 'a third or a fourth' were engaged in trading or mining, while the rest lived in 'utter idleness'[5]. If one bears in mind that some prazos were so large that eight days on horseback were insufficient to tour them[6] and that they were inhabited by thousand of Africans, slaves and otherwise, one has no difficulty in believing that the vast majority of the African population was certainly required to do very little work for the prazo-holder. The size of prazos and the whole economic structure on which ~~the~~ European way of life was based militated in favour of a certain looseness of relations between Europeans and Africans, a lack of tension which could only have been favourable to the latter.

(1)Usually women, accompanied and guarded by men.
(2)On all accounts this was so because methods of exploring the mines were primitive.
(3)Manuel Galvão da Silva, 'Diário ou relação das viagens filosóficas nas terras da jurisdição de Tete e em algumas dos Maraves, 4/7/1788', Anais da Junta de Investigações do Ultramar, Lisbon, vol.IX,I, 1954, p.316.
(4)A. Pinto de Miranda mentioned one house in Sena having six thousand slaves, another, one thousand ('Memória sobre a costa de Africa, 1766', in A.A. Andrade (ed.,),Relações de Moçambique setencentista, Lisbon, 1955, p.253.
(5) A.N.B.Villas Boas Truão, Documentos para a história das colónias portuguesas - Estatística da Capitania dos Rios de Sena, Lisbon, 1889, p.10.
(6)A. Lobato, Colonização senhorial da Zambézia e outros estudos, Lisbon, 1962, p.106.

Although slave trading had been going on for well over a century it is not until the beginning of the 19th century that one finds reports that enfiteutas were engaging in the most shameless of all abuses of power. The trade was no longer restricted to captives in wars and to men and women bought in the hinterland but had extended to the African settlers (colonos) of the prazos, people who 'at most can be described as serfs adscripti glebae and as such belong to the Royal Treasury (Real Fazenda) and cannot be disposed of'[1]. As no activity was at the time nearly as lucrative as the slave trade, mining was abandoned and so was elephant-hunting; some enfiteutas were even prepared to abandon their prazos altogether, having kidnapped and sold beforehand the Africans settled on their lands[2].

For different reasons, Africans did not fare much better after the late 19th century when large scale military campaigns were launched against independent chiefs. Wars had for centuries been a piecemeal affair, either between prazo-holders or directed against particular chiefs. In the 19th century they became systematic, the logical consequence of a determined plan of territorial occupation. They became everybody's business and opposed the two races to an extent hitherto unknown.

At the same time ~~the~~ prazos became, of necessity, more self-centred than had ever been the case. With wars going on, trade within the prazos increasingly took the place of trade with the outside world. Exploitation of Africans started to make sense and consequently gained a new dimension. On the other hand the military campaigns themselves required a good deal of African labour: men were needed as soldiers, bearers and boatmen and this too made conditions of life harder for ~~the~~ prazo settlers.

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(1) Official letter by the governor-general of Mozambique to the Minister of overseas affairs, 9/9/1828; official letter of the governor of Mozambique to the governor of Sena, 7/3/1829 (Documentação avulsa moçambicana do Arquivo Histórico Ultramarino, F. Santana (ed), Lisbon, 1964, pp.471 and 906).
(2) Official letter by the governor-general of Mozambique to the governor of Quelimane, 1829 (Documentação..., p.908).

Newitt's conclusions on the admittedly intractable question of race relations in the prazos appear unsatisfactory. The fact that the Portuguese were able to maintain themselves in Zambezia with practically no armed forces at their disposal he attributes both to an alleged resemblance between Portuguese and African institutions and to the fact that prazo-holders became to a large extent 'Africanised'.

On the one hand Newitt argues that customary land laws in many tribal areas reserves for the chief or the community the ownership of all land, while the individual occupies and uses some portion of that land. This, he says, is also the case in a contract of enfiteuse[1]. By and large this is correct. But contracts of enfiteuse were entered into by the Portuguese king and the prazo-holder without any reference whatsoever to the African element of the population; this point Newitt seems to neglect. I fail to see what difference it could make to Africans what kind of contract their landlords had entered into with their Portuguese king.[2]

Newitt also argues that relations of clientship such as prevailed between the Portuguese and their domestic slaves were known in many parts of Africa and were therefore acceptable to the native peoples.[3] Again this is true but it must be remembered that not all - not perhaps the majority - of the African population of a prazo consisted of slaves.

(1) He writes: 'My conclusion therefore is that in these two very important spheres of human life, land ownership and social relations outside the family, Portuguese and Africans shared many common conceptions. Although in each case there was a totally different cultural history and totally different systems of values behind those apparent similarities it was nonetheless comparatively easy for the two groups to understand each other. It seems to me that it was this which gave the institution of the prazos its peculiar strength' (op. cit., p.195).

(2) Newitt himself seems to have had second thoughts on the matter as he says that one should not infer that 'feudalised Europeans would have got on any better with Africans than their capitalistic descendents' (op.cit.p192).

(3) Op.cit., p195.

There were also the freemen - the colonos - who were already on the land when it was transferred to the Portuguese.(1)

Newitt's second main argument is that, although claims for the uniqueness of the hybrid culture between Portuguese and tropical elements(2) have been grossly exaggerated ,(3) yet the prazo system owed its peculiar strength to the high degree to which prazo-holders had become Africanised.(4) The enfiteuta, he says, 'lived all his life in a twilight world between European and African cultures' and some of the rites practised in Zambezia even came to the attention of the Inquisition in Goa(5).

I am not very sure that some or even a high degree of Africanisation would have made the system acceptable were it not for the fact that it was flexible, did not for a very long time make heavy demands on Africans and gave them, in exchange, benefits which they valued.(6) I would prefer to see in the economic and social assumptions of the system the justification for its relative success, rather than explaining that success in terms of the Africanisation of individual prazo-holders. The more so because the system functioned for over three

(1) The slaves, on the other hand, had been acquired in wars or by purchase, through the gifts of chiefs or voluntary enslavement of the person concerned.
(2) Such as propounded by the leading Brazilian sociologist, Gilberto Freyre, in Integração portuguesa nos trópicos, Lisbon,1958,
(3) Newitt cites the case of centres around some Dutch settlements in South Africa in which a hybrid culture 'as strong and full of vigour as the prazo society of the Zambezi' has developed.
(4) Prof. C.R. Boxer too makes the point that prazo-holders eventually became 'completely integrated in the Bantu tribal system and took over the rights and duties of the indigenous chiefs they displaced' (Race relations in the Portuguese colonial empire, 1415 - 1825, Oxford, 1963, p.50.)
(5) Pp.215 and 216.
(6) Such as a share in looting, relative abundance of food and advantages arising from trade.

centuries and, as Boxer implies and Newitt mentions, extensive Africanisation only occurred during the 19th century.(1)

Anyone superficially acquainted with prazos will tend to think that the system must have had a strong impact on traditional methods of cultivation and customary land laws. Considering that for over two centuries prazos were by far the main form of European land tenure, such view seems well founded, not to say inevitably true.

In actual fact, and whatever dislocation European presence has caused to traditional political life, its relevance to customary land law and tenure appears to have been minimal. The single reason why this should be so has already been suggested: prazo-holders were concerned with anything except to cultivate their prazos.

For the individual, though not for the state, trade was far more lucrative than agriculture. Ivory and gold were sent off to India and exchanged for spices which fetched high prices. Agricultural products, on the other hand, needed markets, which were not always available, and adequate means of transport - not to mention hard work and technical knowhow for which enfiteutas were never famous.

A more specific cause for the stagnation of agriculture was alleged to be the monopoly of trade held by the governor. Barreto, writing in 1667, considered that many fertile lands would be under cultivation if it were not for the governors who did not allow agricultural products to be carried in their ships (which they wanted for their own trade) and who cared only to sell the goods they received from India(2). About a century later an anonymous memorandum found it

(1) Newitt, op.cit., p.219.
(2) "Mozambique could have new grain every year; but governors will not allow this because they want flour (from India) to be consumed, although it arrives in Mozambique already rotten" (op.cit., p.56).

urgent that the monopoly of captain-majors be ended[1]. Governor Mello e Castro stated that cultivation of cotton had been prohibited some years back because demand for printed cotton from India had dropped[2].

Since prazo-holders did not derive their income from the prazos, they put no pressure on Africans to adopt more progressive methods of cultivation and increase productivity. Observers of the middle-eighteenth century, the nineteenth and early twentieth centuries describe the situation in terms which are practically identical. 'These are such vast lands, yet none produces more than nature alone would give', wrote Pereira do Lago in 1766.[3] The commission investigating the prazo system in 1888 found that agriculture was entirely native and not at all extensive, perhaps due to the extortions of the arrendatários[4]. Governor Truão considered that lack of agriculture was due to lack of European population, in turn due to the defective system of prazos; agriculture had not reached as much as 'mediocre standards'.[5] As a consequence, he added, agricultural products were often bought from independent chiefs, as was the case with the wheat consumed in Tete, half of which was bought from the Maravi who cultivated it for sale[6]; similarly, Lacerda e Almeida had a century before found with surprise that sugar consumed in Portuguese South-East Africa came from Rio de Janeiro. In 1927 governor Sousa e Silva makes the old remark that 'agriculture in the Tete district is purely native'.[7]

(1) At the time, the Crown held the monopoly of ivory, that of the governor being restricted to other goods; even so, the author disapproved of it ('Memórias da costa de Africa Oriental e algumas reflexões úteis para estabelecer melhor e fazer florente (sic) o seu comércio', in A.A. Andrade (ed.), Relações....Lisbon, 1955, p.209).
(2) Op.cit., p.107.
(3) Op.cit., p.331.
(4) Op.cit., p.40.
(5) Op.cit., p.11.
(6) The aim of Truão's bookelt is to impress upon the reader that trade in agricultural products should be preferred to the trade traditionally carried on with the hinterland (gold, ivory and slaves); it would be 'ten times more lucrative', he adds.
(7) Distrito de Tete, L. Marques, 1927.

One can only infer from these and similar accounts that Portuguese impact on customary land law was negligible. No pressure of any kind - neither demographic nor economic - was operating which could have had the effect of altering customary land law in any significant way.

Much the same can be said about methods of cultivation. Africans used small hoes and did not know the plough, wrote Dionísio Melo e Castro in 1763.(1) Africans set fire to the grass and cultivated in the ashes, said Pinto de Miranda in 1766.(2) Gamitto noticed that the Cewa cultivated at the surface, in small mounds, and placed a number of seeds together; they did not use manure neither did they train cattle to work.(3) In the final part of this thesis it will be shown that as far as the Ngoni, the Yao and the Cewa (Maravi) of Mozambique are concerned, these comments are as true at the present time as they are likely to have been when they were written.

The Portuguese are often credited for having introduced in Africa a number of new crops and fruit-trees.(4) Portuguese authors writing at various times refer to European plants being cultivated in the more developed prazos. As H.H. Johnston indicated, some of these had already been introduced by the Arabs and were re-introduced by the Portuguese.(5) A description of the trip by the first viceroy of India in 1505 mentions that he and his companions found in several points on the coast such products as oranges, lemons, cotton, sugar cane, onions and pomegranates.(6) The Arabs deserve a share of what is generally considered a Portuguese service to civilisation.

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(1) Op.cit., p.125.
(2) Op.cit., p.244.
(3) O Muata Cazembe, Lisbon, 1960, p.150.
(4) Mainly cassava, maize and sweet potato, according to R. Oliver and J.D. Fage. The authors go as far as to say that 'there can, in fact, be little doubt that the depopulation caused in some districts by the slave trade was more than offset by the growth of population through these new means of subsistence in tropical Africa as a whole ' (A short history of Africa, Penguin Books, Middlesex, 1962, p.134).
(5) British Central Africa, London, 1897, p.429.
(6) Unknown author quoted by E. Axelson, South-East Africa, 1488-1530, Aberdeen, 1940, pp.231, 239.

PART III

THE 19TH AND 20TH CENTURIES

COLONIAL POLICIES AND ADMINISTRATION

CHAPTER VIII

COLONIAL POLICIES AND SOURCES OF LAW FOR OVERSEAS TERRITORIES

1 - COLONIAL POLICIES:

A) The constitutional monarchy

In the 19th century radical changes took place in Portugal's attitudes towards her colonies. The economic policy known as 'pacte colonial' (henceto followed by Portugal as much as by other western colonial powers) was first abandoned with regard to Brazil[1] and subsequently in Africa, Asia and Oceania; antagonism between supporters of national tradition and defenders of the new ideas spread by the French Revolution became apparent. After the revolution of 1820 the new French institutions, social and legal, were copied.

While great flexibility had been a feature of Portuguese colonial policies in the past, in the 19th century a blind obedience to certain *a priori* principles became prevalent. A whole system of colonial administration was deduced from such principles as the equality and liberty of all men, enshrined in the 1822 Constitution.[2] The first manifesto of the Provisional Junta which took over government after the 1820 revolution already expressed a dislike for the term 'colony' and stressed the basic equality of all citizens.[3]

(1) Brazilian ports were opened to foreign trade in 1808, those of other territories in 1811. In the case of Brazil the measure was almost imposed on the Portuguese government by the British, as retribution for the military help given at the time of the Napoleonic invasions of the Peninsula.

(2) Some of the treaties made with African chiefs during the liberal period place great emphasis on equality: one of the obligations of the Portuguese government *vis-à-vis* the Maravi chief Chigaga was to recognise him and his subjects as having 'all the rights and privileges held by Portuguese citizens' (Termos de vassalagem nos territórios de Machona, Zambésia e Niassa, 1858 a 1889, Lisbon, 1890.

(3) In a typically rethorical manner the Junta asserted: 'The insulting term 'colony' having been extinguished forever, we want for ourselves no other title than the generous one of co-citizens of the same motherland' (Apud J. Silva Cunha, Administração e Direito Colonial, Lisbon, 1955, p.101).

In 1821 parliament enacted a law ordering the extinction of the overseas section of the Department of Navy and Overseas Affairs (Secretaria de Estado da Marinha e Ultramar). The Constitution of 1822 contained no specific provision relating to overseas territories, except in connection with the regency of the Brazilian kingdom. The Constitutional Charter (Carta Constitucional) of 1826, too, treated overseas possessions with the same 'liberal silence' referred to by a contemporary parliamentarian.

The purpose to assimilate[1] reached its highest point when the administrative reform of Mousinho da Silveira, dated 1832, was made applicable to overseas as well as to metropolitan territories. The Overseas Council (Conselho Ultramarino), a consultative body of reputable traditions and one which had effectively influenced colonial matters in the past, was dissolved. The Administrative Code of 1836 was made applicable to overseas territories with only minor alterations. The first Portuguese Penal Code, dated 1852, was applied to all possessions without any modification at all. In the field of Labour Law, the same provisions which governed labour relations in Portugal were extended to her overseas provinces, to Europeans and Africans alike.[2]

Power to legislate for the colonies was firmly held by parliament[3] and could be delegated only in exceptional circumstances: the executive in Lisbon could legislate in urgent cases, provided parliament was not in session; governors could legislate only if they had to

(1) The French, too, approached the constitutional relationship between colonies and metropolis with an assumption derived from the republican principles of 1789. The republic was one and indivisible: colonies were an intrinsic part of it, and should ideally be assimilated to it in every particular (D.K.Fieldhouse, the colonial empires London, 1966, p.308).
(2) Namely, natives, like Europeans, could be compelled to work only if they were vagrants.
(3) In 1838 the government of the day introduced some constitutional changes (inter alia to the effect that overseas provinces could be governed by special laws according to their specific requirements - article 137) but they were repealed by the following government in 1842.

attend to 'such urgent needs that a decision by parliament or by the central government could not be awaited for' (Constitution of 1838).[1] Attempts made in 1811, 1836 and 1881 to de-centralise administration by creating local boards with some measure of jurisdiction (juntas gerais) and councils advisory to the governors (conselhos do governo) met with little success and never fulfilled any relevant role.

As was repeatedly pointed out, all this made for stagnation. The apathy prevailing in Portuguese territories was often contrasted with the activity and progress of the neighbouring British colonies whose councils were free to pass their own laws subject only to the veto of the governor[2]. Plantation colonies like those in the Caribbean, it was pointed out, enjoyed greater freedom than the most advanced of Portuguese colonies[3].

(1) The result was that, since parliament had neither the time nor the inclination to deal with colonial matters (with which most of its members were unfamiliar) they were usually neglected. It also happened that parliament was called upon to decide on matters 'which would be within the competence of any British or French governor' (A.Almeida Ribeiro, 'Descentralização na legislação e na administração das colónias (1917)', in Antologia Colonial Portuguesa, Lisbon, 1946). The executive in Portugal, on the other hand, proposed bill after bill without much hope of seeing them discussed while parliament was in session; as soon as the latter receded, however, the government decided upon all matters from the most important to the most trivial. As to the colonial governors, they either resigned themselves to immobility or alleged reasons of urgency which often did not exist, thus entering into conflict with the central government (op.cit.,).

(2) H. Paiva Couceiro, 'Necessidade de directrizes constantes na política colonial' (1898)', in Antologia.....).

(3)Ernesto Vilhena, Questões coloniais, Lisbon, 1910, volI, p.402. He adds: 'We do not give our governors- general powers to govern but we are generous with principles: we have created local councils where there are no inhabitants and we have elected members of parliament where there are no voters'.

Only in the field of private law did legislation eventually deviate from a general tendency to promote uniformity. The decree of the 11th November 1869 provided for the application of the Portuguese Civil Code to the colonies but contained a provision (article 8, paragraph 1) to the effect that the usages and customs of native peoples (and not the provisions of the Code) were applicable in relations between them.(1)

The first call for reform came from António Enes who in 1891 was sent to Mozambique, among other things to investigate the economic and political conditions of the territory. His main conclusion, expressed in his well-known report Moçambique (1893) was that the colony could be lucrative provided the system of administration in force was changed.(2)

The system recommended by him was entirely new when compared to that which had prevailed since 1820. Decentralisation was insisted upon. Administrative units typical of metropolitan Portugal - the concelhos - were to be replaced by civil districts (circunscrições civis) or military districts (comandos militares, in regions only partly 'pacified').

The power of the great chiefs had been destroyed but small potentates were maintained; (3) Enes' aim was to fill the vacuum created by

(1) For a discussion on the attempts made at compiling codes of African laws at different times, see Appendix C.
(2) During the second half of the 19th century a relevant body of opinion in Portugal favoured the alienation of all overseas territories. The historian Oliviera Martins took an intermediate stand and recommended that Angola alone should be kept and all efforts concentrated on the development of this one territory.
(3) By no means a situation peculiar to Portuguese Africa. For the crumbling of authority held by powerful chiefs in the neighbouring territory of Nyasaland, see E. Stokes, 'Early European administration and African political systems in Nyasaland, 1891-1897', Proceedings of the 17th Conference, Rhodes-Livingstone Institute, 1963.

the elimination of the big chiefs from the politcal scene with European authorities holding, among others, the power to administer justice[1] - a prerogative which, he thought, Africans viewed as an 'unmistakable sign of authority'.

B) From 1910 to the Second World War

The Portuguese monarchy fell in 1910. The republican regime which followed soon showed its willingness to provide new solutions to what were old problems.

In 1910 a Colonial Office was created as an autonomous body. The new Constitution (1911) recommended decentralisation and the enactment for overseas provinces of 'special laws suitable to the state of civilisation in each of them'.[2] A system of high-commissioners with wide powers, as adopted by the British in colonies of white settlement, was set up in 1920 - a measure, incidentally, which went some way towards remedying the evils of ministerial instability in Portugal.[3]

This policy of autonomy was soon abandoned[4]. The prevailing mood in international circles, after the first world war, that colonial territories should become the responsibility of international agencies rather than continue to be the preserve of certain Western powers, created fears in Portugal and led the government to tighten existing ties between metropolis and colonies. In 1926 and again in

(1) In British Africa too District Commissioners performed the functions of administrative authorities as well as those of magistrates; the difference was that native courts were maintained.
(2) Article 67 of the 1911 Constitution.
(3) One of Mozambique's high-commissioners is said to have remarked that in four months he had known three ministers for the colonies, none of whom gave him any instructions regarding his government of the colony (J. Silva Cunha, op.cit., p.113).
(4) The experiment with high-commissioners lasted for one year in the case of Mozambique and two in the case of Angola.

1928 the powers of high-commissioners were severely restricted and the system was eventually abolished altogether. A new act, the Acto Colonial, 1930,[1] was passed which emphasised the unity between the different parts of the empire. The main principles to be followed in colonial policy were in essence: political unity and economic solidarity between metropolitan Portugal and her overseas possessions, and nationalisation of colonial economies.[2] Two laws were then enacted (the Carta Orgânica do Império Colonial Português and the Reforma Administrativa Ultramarina, both dated 1933) which developed the principles of the Acto Colonial and of the Constitution of 1933. The new colonial policy was summarised by a jurist of the regime as 'striking a balance between the aim of deferred assimilation (assimilação diferida), the respect for the special conditions of each territory and the unity of the ensemble'.[3] Special laws, to be discussed later in this work, were devised for Africans during this period.[4]

C) Since World War II

Some relaxation in the policy of administrative and financial centralisation was taking place in the late 1930's when the anti-colonialism which marked the post-war years put the clock back in Portugal once more. History repeated itself: military forces in overseas territories were integrated into the ministry of War[5], thereby ceasing to depend on the military section of the ministry of Overseas Affairs;

(1) In 1933 the new Constitution provided (article 133) that the Acto, while remaining an autonomous piece of legislation, was to have the strength of a constitutional enactment.

[illegible] capital was to take

(4) See below pp. 181 et seq.

(5) Now Ministry of the Army (Ministério do Exército).

(4) See below pp. 181 et seq.

(5) Now Ministry of the Army (Ministério do Exército).

there were plans to suppress the latter altogether; the term 'colony', used since 1910, was replaced in the Constitution by that of 'province'; the jurisdictions of the central government and the National Assembly were enlarged at the expense of that of local governors; economic unity was recommended(1) and ties of political interdependence emphasized; the Carta Orgânica was replaced by the Lei Orgânica(2), an enactment applicable to all overseas territories generally(3).

As Professor Silva e Cunha has noted all legislation enacted after 1951 points to a return to a policy of complete assimilation(4).

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II - SOURCES OF LAW FOR OVERSEAS TERRITORIES

Earlier in this chapter it was indicated that throughout the 19th century all matters concerning the colonies were decided by parliament in Lisbon, The colonies, or 'provinces' as they were then called for the first time, were ruled by the same laws applicable to Portugal; and their administrative organisation followed the metropolitan pattern.

It was also described how, since the end of the last century, a movement of reaction against this state of affairs spread in political circles. As a result, parliament is no longer the only legislative

(1) All territories were to adopt the same currency (a provision which was never put into execution) and custom-houses regarding goods sent from Portugal to the provinces or vice-versa were to be abolished.
(2) Dated 27th July 1953. It was revised in 1963.
(3) In theory the Lei was supposed to provide only general bases while detailed legislation would be enacted for each territory according to local conditions; in effect the so called bases were so complete (comprising over one hundred articles) that very little was left to the local legislator.
(4) Op.cit., p.121.

body for the colonies and the administrative organisation prevailing in African territories no longer ignores local conditions.

I propose to discuss administrative organisation in a subsequent chapter and to limit my analysis for the time being to legislatures and the powers they have been given by law.

At present, and according to article 149 of the Constitution, 1933, overseas territories are 'normally' (1) ruled by special legislation(2) enacted either by legislative bodies sitting in Portugal or by local bodies in each province. Metropolitan bodies holding legislative powers are the National Assembly and the government.

Article 150 of the Constitution defines the jurisdiction of the National Assembly. The Assembly legislates for the whole of the Portuguese territory on those matters which by law fall within its exclusive jurisdiction(3); in the specific case of the colonies, the Assembly can also pass laws (called leis): a) regarding their general system of government; b) defining the limits of the jurisdiction of the metropolitan government and the governments of the colonies regarding grants of land or any other concessions which may involve special privileges; c) authorising contracts, other than loans, whenever special guarantees are required.(4)

(1) The law previously in force (Acto Colonial, 1930, article 25) provided that the colonies were ruled by special provisions. The restrictive expression 'normally' was not then used; its introduction in the new text represents a concession to the trend towards assimilation prevailing in the Constitution (J. Silva e Cunha, op.cit.,p. 396).
(2) This principle of specialisation does not prevent legislation enacted in Portugal from being sometimes applied to the colonies (see below, p. 116).
(3) Organisation of national defence, changes in currency, statutes of courts and restrictions on individual freedom (article 93 of the Constitution).
(4) Article 150, No.1 of the Constitution. The Portuguese original is as vague as its English translation. It is not at all clear who are supposed to be the parties to the said contracts.

In other words, the National Assembly, as far as overseas territories are concerned, has a specific, as opposed to a generic, jurisdiction. The second point to note about the legislative power of the National Assembly is that it cannot be exercised unless a bill is introduced by the minister of Overseas Affairs - the Assembly has not iniciative to legislate for the colonies.(1)

As to the government, although it legislates by delegation of the National Assembly, it appears to have much wider powers than the latter. The Constitution is curiously ambiguous in this respect. It does not enumerate the cases in which the Assembly is to delegate its powers to the government; in fact the original relevant article, which limited the power of the government to issuing decrees 'in accordance with delegated powers and in cases of urgency and public necessity' has been replaced by another article which merely states that the government "can issue decrees".(2) The gates, one feels, have been wide open permitting, if not encouraging, authoritarianism by the state.

The government can either legislate for the whole territory (in which case it is also legislating for the overseas provinces) or enact laws on matters of common interest to the various overseas provinces.(3) Enactments issued by the government are called <u>decretos-leis</u>. They are signed by all ministers and promulgated by the President of the Republic; bills can be introduced by the minister of Overseas Affairs, the Prime Minister or indeed by any minister interested in a given issue.

(1) Article 150, No.1 of the Constitution.
(2) " 109, No.2 of the Constitution.
(3) Article 150, No.2 of the Constitution; <u>Lei Orgânica</u>, 1963, <u>Base</u> IX, III, a).

So much for the legislative powers of the government as a whole. The minister of Overseas Affairs, too, has legislative powers, although they obviously relate to overseas territories only. He can legislate by means of decretos simples, signed by him, ratified by the Prime Minister and promulgated by the President of the Republic. It appears from the wording of the Constitution(1) that the minister can legislate for the colonies in the same cases as the government as a whole, with one important restriction: the highest consultative body for overseas affairs; the Conselho Ultramarino, must be heared beforehand.(2)

While on a visit to an overseas province the minister can also legislate for that territory (by diploma legislative ministerial), provided he was previously allowed to do so by the Council of Ministers or provided circumstances are such that it becomes imperative for him to take action. Finally, the minister of Overseas Affairs exercises legislative powers (by portaria) when he orders legislation already in force in Portugal to be applied to all colonies, or some of them.(3)

In the colonies themselves powers to legislate fall on the governor, together with a Legislative Council (Conselho Legislativo) or a Council of Government (Conselho do Governo).(4)

(1) Article 150, No.3 - the legislative powers of the Minister are set out in detail in the Lei Orgânica, 1963, Base X .
(2) Except in cases of emergency and others specified in the Constitution.
(3) Only after publication in the local official gazette (Boletim Oficial) does a metropolitan decree become law in a given territory.
(4) Some colonies (Angola and Mozambique), called de governo geral, have a more elaborate administrative organisation than others (called de governo simples). The former have both a legislative council (Conselho Legislativo) and an advisory council constituted by civil servants (Conselho de Governo); the latter type of colony have no legislative council but only a Conselho do Governo.
Between 1920 and 1933 when the system of high-commissioners was in force there were in the Portuguese colonies both legislative and executive councils, in the English model.

Some of the governor's powers to legislate are original, others delegated. Original powers are defined, as is so often the case with Portuguese laws, negatively. Article 151 of the Constitution provides that the legislative bodies of each overseas province are competent to legislate on those matters relating to a given province which do not fall within the jurisdiction of either the National Assembly, the government of the minister of Overseas Affairs.

Power to legislate can also be delegated from above. Article 154 of the Constitution provides that 'in special circumstances, certain matters' which are normally of the competence of the National Assembly, the Government or the minister of Overseas Affairs, can be decided upon by a colonial governor. One conclusion to be drawn from Article 154 is that a general delegation of powers (such as was inherent in the abandoned system of high-commissioners) is not permissible. The article also reflects the centralised nature of Portuguese administration - a local authority derives its powers not directly from the law but from a unilateral concession by the central body. Again, the vagueness of the article,(1) which refers to 'special circumstances' and 'certain matters', without specifying either, makes for authoritarianism in administration.

The rules governing the legislative activity of the governor and his councils are provided for in the Lei Orgânica.(2) If the governor of Mozambique agrees with the bill of the legislative council he orders it to be published, thereby becoming a law (diploma legislativo). If he does not agree he puts the matter to the minister of Overseas Affairs who can either order the governor to publish the decisions voted by the

(1) The rule of Article 154 is not developed in the colonial legislation supposed to enlarge on the principles of the Constitution.
(2) Base XXIV.

legislative council or legislate himself as he thinks fit.[1] Whenever the legislative council is not in session[2] the governor hears the Conselho do Governo, an advisory body constituted by civil servants.

As to the legislative council, its composition reflects the corporative nature of the Portuguese state. All members (27 altogether) are elected but in a particular way: three are elected by tax-payers paying a certain minimum; three by corporate bodies representing employers, three by corporate bodies representing workers, three by bodies representing 'moral and cultural interests' (one must always be a Catholic missionary), etc.; only nine are elected by direct suffrage of the registered voters.[3]

It is obvious that the whole system suffers from extreme centralisation of power. Legislative councils cannot effectively legislate, firstly because their jurisdiction is strictly limited and secondly because both governor and minister have a right to veto their decisions. The Governors are in no better position: their powers are only negatively defined or else are granted them by delegation, at such time and in such circumstances as are chosen by the government in Lisbon.

(1) It is interesting to note that in the case of India the powers of the legislative council were wider - if a law was passed by a majority of two thirds the governor was compelled to publish it. In no instance was the matter referred to the minister.
(2) There are two ordinary sessions a year, each lasting a month; extraordinary sessions can be called at any time.
(3) Estatuto político - administrativo da província de Moçambique, 1963, Article 26.

CHAPTER IX

ADMINISTRATION AND JUDICIAL SYSTEM

I - ADMINISTRATION:

A) From the separation from India to the present day

Since the developments in administration introduced in 1752 when Portuguese East-Africa was separated from India[1], the system continued to operate without further dramatic changes. The highest authority in the territory was and remained the captain-general (later called governor-general); Distritos[2] were governed by governadores de distrito who gradually took over the functions of the captain-majors. The term capitão-mor, always somewhat ambiguous[3], became more so, it being sometimes granted in the 19th century as an honorary title; the name was also given to men whose specific function was to administer justice to Africans or Arabs according to their customary laws[4].

A reform dated 1st December 1869 provided a comprehensive set of administrative rules. That being the heyday of liberal thinking, the territory was divided, following the pattern prevailing in Portugal, into concelhos. The governor-general had as his subordinates the governors of the distritos who in their turn ranked above the administradores de concelho and the comandantes militares.[5]

(1) See ante, pp.73-4.
(2) The term distrito is not equivalent to the English district; it comprises a much wider area - a province, in English. The confusion arises, from the fact that the whole colony is in Portuguese terminology a province.
(3) Factors were sometimes given administrative powers and called captains.
(4) See below, p.136.
(5) Capitães-mores are not mentioned in the reform. Clearly, as administrative authorities, they were in the process of disappearing.

The governor-general could belong either to the civil or the military class and held military and executive functions. He was advised by a council - the Conselho do Governo, constituted by official members only -, and a body in charge of the financial administration of the province (Junta de Fazenda); it was mentioned before that he had no legislative powers except in cases of urgency and that he had to apply laws enacted by parliament in Lisbon.(1)

In each distrito the highest authority was its governor, who had both military and civil functions and powers; by law he was bound to belong to the military class. Typically, his functions were those of his homonyms in the kingdom; in addition he was the commander of the military forces in his distrito and the administrador do concelho of his area. Being a layman in administrative affairs, he had a secretary to help him.

Subordinate to the governadores de distrito were the military commanders (comandantes militares) - military authorities who held administrative powers and sometimes judicial powers as well. Some military commanders, apparently those of the more remote areas, had the same powers as the governadores de distrito.(2)

By 1885 the whole province was divided into nine distritos, seven of which coastal.(3) These nine distritos were grouped into two constituencies which elected members to the metropolitan parliament.

It was mentioned in a previous chapter that António Enes, Royal Commissioner and governor of Mozambique, rebelled against what he called the 'mania of assimilating' on the part of the central government.

(1) See ante, p.107.
(2) J. Almeida da Cunha, Estudo àcerca dos usos e costumes dos banianes, bathiás, parses, mouros, gentios e indígenas, Moçambique, 1885.
(3) J. Almeida da Cunha, op.cit., This, incidentally, is indicative of the limited extent to which the Portuguese dominated the hinterland. One of the two distritos in the interior, Manica, had 'neither definite boundaries nor a capital'. (J. Almeida da Cunha, op.cit.).

He and his followers took steps which led to wider powers being granted to the colonial agencies of government[1] and to the replacement of the territorial units on the metropolitan model - the concelhos - by circunscrições more suitable to local conditions. As the territory became 'pacified', military commands, too, gave way to civil circunscrições.

The first circunscrições were created in 1895 by Enes in the Crown lands of the distrito of Lourenço Marques; a subsequent administrative reorganisation of Mozambique, dated 1907,[2] established for the whole colony a net of civil circunscrições.[3] Inevitably, the old and the new systems co-existed for some time[4] before uniformity was achieved.

B) The present system

1) Metropolitan bodies affecting the administration of overseas provinces.

Almost enough has already been said about these bodies. Those with legislative powers, the National Assembly and the Government, were discussed at some length under the heading 'sources of law'. It remains to add that the Council of Ministers has the executive power to nominate and dismiss governors of overseas provinces, on proposals by the minister of Overseas Affairs.[5]

(1) All legislation passed until the late 1920's aimed at de-centralisation; the system of high-commissioners, on the British model, belongs to this period.
(2) Carried out by Enes' follower, Ayres d'Ornellas.
(3) In Angola they date from 1911.
(4) A governor of the distrito of Tete in 1910 commented that in his area there were the following units of administration: 1) the concelho of Tete; 2) the capitania-mor of Báruè; 3) five commandos militares; 4) islands on the Zambezi under a special system of direct administration by the state; 5) prazos whose holders were not only agents of the authority (agentes da autoridade) but true feudal landlords (J.P.P. Vellosa Camacho, 'Projecto de remodelação da divisão administrativa', in Relatrios e Informações (Anexo ao Boletim Oficial de Moçambique), 1910).
(5) Article 109 paragraph 5 of the Constitution; Base XVIII, I and V of the Lei Orgânica, 1963.

As one might expect, the latter minister also has important executive functions. A large number of departments and sub-departments are subordinate to him [1] and several advisory bodies - legal, political and technical - render him their services whenever required to do so.

By far the most important of the advisory bodies is the Conselho Ultramarino whose origin dates back to 1642.[2] Its functions are fourfold: it is the highest advisory body to the minister, it is the Supreme Administrative Court for overseas territories,[3] it is the tribunal before which breaches of the Constitution occurring in the colonies can be argued, and it is the Supreme Judiciary Council (with advisory functions only) for the colonies.[4]

(1) The largest units which are part of the ministry of Overseas Affairs are: the Gabinete do Ministro, the Secretaria-Geral, four Direcções Gerais and six Inspecções Superiores. The latter two comprise a number of sub-departments.
(2) In the first years of Spanish domination over Portugal(which lasted from 1580 - 1640) king Philip II founded the Conselho das Indias - a body meant to help the king decide matters arising in connection with the West Indies - on the Spanish model. Portuguese organisations with traditional interests in overseas territories (such as the Order of Christ) raised a protest and the scheme was abandoned. Only after independence did the Conselho function,under its present name (J. Silva e Cunha, op.cit., pp.265-6).
(3) When the Constitution was revised in 1951 the possibility of abolishing the Conselho was put forward - a measure which would agree with the policy of immediate assimilation prevailing at the time. It was, however, considered that administrative appeals from the colonies would have to be presented to the Supreme Administrative Court (Supremo Tribunal Administrativo) which would require a new section to deal with such matters; a similar problem would arise with regard to the advisory role of the Conselho Ultramarino. It was decided that the Conselho should not be abolished (J. Silva e Cunha, op.cit.,p.368).
(4) Two laws provide for the composition of the Conselho Ultramarino and its functions: the decretos - leis nos.39602 and 39908 of 3/4/1954 and 17/12/1954, respectively.

As an advisory body it is incumbent upon the Conselho both to give opinion on bills submitted to it by the minister of Overseas Affairs and to prepare bills whenever asked by the minister to do so. The Conselho have also to give their views on any administrative questions submitted to it. That is, as an advisory body the Conselho has a share in both the legislative and the executive functions performed by the government.(1)

The Conselho is constituted by three kinds of members: ex officio, effective (efectivos) and substitute. Ex officio members are the governors of the colonies whenever they happen to be in Lisbon. Of the nineteen effective members eleven are appointed by the Overseas Minister(2) and only eight by the Council of Ministers, on a proposal by the minister. Members of the section concerned with the administration of justice(3) are chosen from lawyers with experience in overseas administration; members of the two advisory sections are chosen from among ex-high officials, irrespective of whether or not they have a legal background.

Other permanent advisory bodies to the minister of Overseas Affairs which in some way or another may affect the course of administration in African territories include the Conselho Superior de Disciplina do Ultramar, the Junta das Missões Geográficas e de Investigação do Ultramar, the Conselho Superior Técnico de Fomento do Ultramar, Conselho Superior Técnico das Alfândegas do Ultramar, Junta Central do Trabalho e Emigração and the Gabinete de Urbanização do Ultramar.

(1) Decreto - Lei 39602, Article 2 a) and d); Lei Orgânica, Base X, III and Base XIV .
(2) Three of these members are proposed by the Conselho itself.
(3) The Conselho is divided into three sections: one for the administration of justice and two advisory.

Occasional meetings like the Conference of Overseas Governors and Economic Conferences of Overseas Territories are called whenever the minister thinks fit.(1)

2) Administrative organisation of overseas provinces

The Constitution, 1933, does not deal with this matter in any detail and merely states that it will be provided for in the ordinary legislation.(2) That legislation is at present the Lei Orgânica, 1963, which in its Base XVI, I, states that overseas provinces are divided into concelhos. As was previously noted,(3) this is the basic unit in metropolitan Portugal and the fact that it is adopted by present legislation reflects the prevailing trend towards assimilation between all parts of the empire.(4) Some concessions, however, are made to local conditions; having stated the general rule the law goes on to say that in areas where sufficient economic and social development has not yet been attained,(5) circunscrições can temporarily take the place of concelhos.(6)

As to the criterion determining which areas are to be classified as concelhos and which as circunscrições, it seems to be threefold.(7) Concelhos comprise villages with a high density of civilised population;

(1) Lei Orgânica, 1963, Bases XV and XVI.
(2) Article 156 of the Constitution.
(3) See ante, p.110.
(4) In the laws formerly in force, the Carta Orgânica, 1933, and the Reforma Administrativa Ultramarina, 1933, the basic units were the circunscrições; this had been the case since the reforms by Enes at the end of the last century.
(5) Of the areas studied in this work, two have only recently attained the status of concelhos, one is still a circunscrição and only one had been a concelho for some years.
(6) Lei Orgânica, Base XLV, II.
(7) 'População civilizada' (Article 7 of the Reforma Administrativa Ultramarina).

there must be widespread commercial or industrial activity in the area; there must be a number of buildings of a permanent nature and in good conditions of hygiene[1]; *circunscrições*, on the other hand, will predominate in areas whose peoples have not yet become integrated into Portuguese culture.[2]

Both *concelhos* and *circunscrições* are grouped into wider units, the *distritos*.[3] Only provinces of *governo-geral* (Angola and Mozambique and, formerly, India) are divided into *distritos*, not the provinces of *governo simples*.[4]

Concelhos - as in Portugal - are divided into *freguesias*, supposed to have substantial numbers of Europeanised Africans; *circunscrições* are divided into *postos administrativos*, which are areas with a predominance of tribal Africans, *Circunscrições* and *postos* have no local councils; these are set up only in *concelhos* and *freguesias*. Local councils are elected bodies but their president is appointed by the governor; the choice can, and often does, fall on the *administrador do concelho* himself (*Lei Orgânica*, *Base* XLVII, III).

The authorities corresponding to the administrative organisation described are: in the *distrito* the *governador do distrito*, in the *concelho* the *administrador do concelho*, in the *circunscrição* the *administrador de circunscrição*, in the *posto* the *administrador de posto* and in the *freguesia* the *regedor*.

(1) Article 7, *Reforma Administrativa Ultramarina*.
(2) *R.A.U.* Article 8.
(3) What the British would call provinces (see *ante* p. 113).
(4) The lesser of Portuguese overseas territories (see *ante* p. 116).

3) Central provincial administration in overseas territories.

The governors of Angola and Mozambique and, before 1961, India, have the title of governadores-gerais; governors of other possessions are simply called governadores. The roles of the two kinds of governors do not differ essentially but the fact that public opinion is more widely represented in the case of provinces of governo-geral[1] limits the powers of the governador-geral.

Governors are appointed, on a proposal of the minister of Overseas Affairs, by the Council of Ministers, for four years; this period can be shortened or extended for one, two or more periods of two years each.[2]

Governors are subject not only to civil and criminal responsibility in the usual terms but to political responsibility as well. They are bound to the minister of Overseas Affairs and the government by ties of 'personal trust'; whenever they fail to follow the directions given them by the government (through the minister of Overseas Affairs) they incur in political liability.[3]

As other colonial governors elsewhere - but severely limited in the way described[4] - the Portuguese governors have administrative, legislative and political functions, all of which have already been looked into.

In Angola and Mozambique the executive duties of governors can be delegated to Secretários Gerais and Secretários Provinciais; their sphere of action of each is not clear and either Secretário can be

(1) These have legislative councils as well as conselhos do governo; the others have only the latter (see ante, p.116).
(2) Lei Orgânica, Base XVIII.
(3) J. Silva e Cunha, op.cit., p.385. Professor Silva e Cunha is the present minister for Overseas Affairs and an ex-professor of the Law Faculty of Lisbon.
(4) See ante, p.117.

delegated whatever duties the governor thinks fit.[1] They are appointed and dismissed by the minister of Overseas Affairs, on proposals by the governor. Their mandate ends at the same time as that of the governor who has proposed them.

As to the collective bodies working with the governor, the Conselho Legislativo and the Conselho do Governo, their attributions and composition have already been discussed.[2]

4) Functional relationship between central administration in Portugal and provincial administration

The key principle in this respect is that of Base IX of the Lei Orgânica which provides that the government superintends and controls the whole of the administration of overseas provinces, either directly or through the president of the council of ministers, the council of ministers, the minister of Overseas Affairs or, occasionally, other ministers. In practice such supervision is exercised by the minister of Overseas Affairs who secures the connection between central and provincial administrations. In the legislative sphere the minister can annul or revoke,[3] either totally or in part, any laws (diplomas legislativos) enacted by overseas provinces whenever he considers them 'illegal or inconvenient to the national interest'.[4] On the executive side he can at any time annul, alter or suspend any decisions by governors if they are not constitutive of rights, and order appeals to be presented to the Conselho Ultramarino in the case of decisions which are constitutive of rights, if he considers them illegal.[5]

(1) Secretários-gerais (as opposed to secretários provinciais) were originally meant to be permanent officers, the depositaries of an administrative tradition giving continuity to the services. This, however, was found objectionable in some governmental circles and the office of secretário-geral is at present temporary (J. Silva e Cunha, op.cit.,p.387).
(2) See ante pp.117-118.
(3) Before so doing, the minister should inform the governor of the province of his disagreement and give the governor the opportunity to state his case (Lei Orgânica, Base X, II).
(4) Lei Orgânica, Base X,II.
(5) Lei Orgânica, Base XI,III.

In conclusion, the minister has effective powers to supervise the way in which overseas administration is run.

5) The role of African political institutions.

The nature of the contact which prevailed between Portuguese authorities and African chiefs throughout the long history of Portuguese occupation of Mozambique has been discussed at various points in this work.(1) It varied from time to time and place to place but, broadly speaking, tended to be the direct result of the relative strength of the parties involved.

The regime at present in power in Portugal has consistently stated that it aims at the assimilation of the African peoples into the Portuguese nation. This is not to be achieved at once but sometime in the future - no speaker for the regime ever committing himself to a definite date.(2) The government's policy has been described as one of 'deferred' or 'tendential' or 'eventual' assimilation.(3) The same vagueness prevails vis-à-vis the system of administration applicable to Africans, which has been described as one of the 'attenuated indirect rule'.(4)

Between 1914(5) and 1961 Africans were denied rights in European political institutions and were allowed to exercise rights in their own institutions only; this measure was allegedly a temporary one and, in fact, ceased to apply in 1961 when the status of indígena was repealed.(6)

(1) Particularly, pp.22-38 and Chapter VII.
(2) Liberal governments of last century, on the contrary, promoted complete and immediate assimilation (see ante, p.107 et seq).
(3) J. Silva Cunha, op. cit., p.457.
(4) J. Silva Cunha, op. cit., Considering that the principal aim of 'indirect rule' (to promote the evolution of African institutions) is not part of Portuguese policy, the expression appears inadequate. However, and as Lord Hailey has noted (Native Administration in British African territories, London, 1951, pt.IV, p.36), the distinction between such terms as 'direct rule', and 'indirect rule' is often far from clear.
(5) See below p.178.
(6) See below p.130.

The first law which enacted provisions regarding African political institutions was the Estatuto dos Indígenas, 1929, whose article 6 stated:

> "The State guarantees the normal activity of the political institutions of natives and their gradual improvement, and maintains native authorities recognised as such by administrative authorities".(1)

Article 7 of the same Statute clearly separated Portuguese political organisation from that of Africans:

> 'No political rights will be granted to natives in regard to institutions of an European nature'.

Africans were thus explicitly denied the political rights of Europeans; although "nationals", they were not citizens until 1961.(2)

The Reforma Administrativa Ultramarina of 1933 stated that native authorities should be considered as auxiliaries to the Portuguese administration (article 76). The same law in its art. 91 provided that native populations could be grouped into regedorias. The regedorias could be divided into grupos de povoações and in povoações. The regedorias should correspond to traditional administrative divisions and their tribal name could be maintained. Native authorities also kept their traditional titles and were selected according to customary law but assent of the administrative officer had to be obtained and they remained in office so long as they were trusted by the Administration. Their duties were those attributed to them as auxiliaries of the Administration - mainly to carry out orders given to them and to see that such orders were obeyed (art.99). Art.16 of the

(1) Article 6 - 'O Estado assegura o bom funcionamento e progressivo aperfeiçoamento das instituições políticas dos indígenas e mantem as autoridades gentílicas como tal reconhecidas pelas autoridades administrativas'.
(2) See below p. 182.

1954 Estatuto and 104 of the R.A.U. provided for the ~~in~~formation of councils in the regedorias and regulated their composition.

The Estatuto dos Indígenas, 1954, was based upon the same principles of the preceding enactment. Art.7 provided:

> " The traditional political institutions of natives are temporarily maintained and should be harmonised with administrative institutions of the Portuguese State in the way provided for by law".(1)

Art.23 of the 1954 enactment repeated the former provision to the effect that Africans were not to have political rights in non-native institutions. Although its practical effect was insignificant, yet there was one exception to this rule of separation of native and non-native political organisations: the paragraph to article 23 provided that natives were to be represented in the Legislative Council of each colony; the two representatives of African interests were, however, not elected but appointed by the governor.

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In 1961 the legal status of Africans was radically changed, if not in practice at least according to the letter of the law. The Estatuto dos Indígenas, 1954, was repealed. Indígenas were no longer 'subjects' nor 'nationals'(2) but full citizens. In the preamble to his decree 43.893,of September 6th, 1961, the minister responsible(3) gives his reasons. In the past, he argues, the private laws by which

(1)'Art. 7º - As instituições de natureza política tradicionais dos indígenas são transitoriamente mantidas e conjugam-se com as instituições administrativas do Estado Português pela forma declarada na lei'.
(2)See below p. 182.
(3)Prof. Adriano Moreira, Overseas Minister.

Africans were ruled determined their political rights and although this has been done in order not to impose foreign structures on native peoples (in order "not to do violence to the peoples", as he puts it), the result of this dependence was that adversaries of the regime used it to maintain that the Portuguese people were subject to two different political laws and therefore divided into two separate categories. It was this connection between a person's political law and his private law that the author of the decree wished to break. The Estatuto dos Indígenas was repealed and thereby all Portuguese nationals became ipso facto Portuguese citizens, their position as to "public law" presenting no variation. This, however, does not amount to say that Africans are to be ruled by Portuguese legislation in the field of "private law". On the contrary, their customs continue to apply. There is no contradiction in this state of affairs, Dr. Moreira insists, and the same situation did in fact prevail for centuries in India.

The position nowadays is that any African can be ruled by Portuguese private law, without having to prove[1] that he has become assimilated to Portuguese culture. It is a matter of choice for the individual which system of law is to apply to his personal relations and property. If he prefers to be ruled by Portuguese law all he has to do is to apply for a bilhete de identidade[2] which is free, cannot be refused and cannot be revoked. As to public law there is no room for option and there is only one possible situation: Africans and non-Africans, educated Africans and Africans in the bush all have the same rights and duties vis-à-vis European political institutions.

(1) See below pp.183-4.
(2) It is interesting to notice that the bilhete de identidade, formerly considered as constituting "full proof of citizenship" (Prof.Silva e Cunha, Política Indígena, Lisb.,1965, p.13), has lost its meaning. It is now issued to all those who declare that they renounce their customary laws and want to be ruled by Portuguese law. In other words, its significance is now in terms of private law and not of public law.

It would be a mistake to suppose, as one is no doubt tempted to, that the 1961 decree assumes that the aim of many years of colonial policy - assimilation - has now been attained. Not only does the decree not say so but this would be inconsistent with the fact that customary laws are preserved by the new enactment. Instead, what the decree of 1961 appears to consider is that African populations can now dispense with former forms of protection such as the exclusive application of their customary laws. Africans can now be trusted, the argument appears to be, to choose which laws are more suitable for them.

Dr. Moreira in the preamble to his decree states that it is the purpose of the enactment to break the connection between a person's political status and his personal law. But this statement does not give the full measure of the change. More important than this is the fact that the whole concept~~ion~~ of indígena was changed retrospectively. Several past enactments defined an indígena[1] as someone who had not become assimilated into Portuguese culture (and for this reason his customs were maintained). What made an indígena an indígena was not only the fact that he did not have political rights with regard to Portuguese political institutions (as Dr. Moreira appears to assume) but also that he did not live in the Portuguese manner. The 1961 decree made a departure, which its author does not discuss, from this conception of native status in that it assumes that by granting political rights to natives in European institutions, they have ceased to be natives.

Another point to notice is that African political organisations have been kept as they were before, whereas consistency demands that Dr. Moreira should have abolished them. The decree No.43.896[2] reproduces

(1) See below p. 182.
(2) The repeal of the Estatuto dos Indígenas entailed the promulgation of other laws as well. Dr. Moreira's enactments comprise eight decrees altogether, all dated 6th September, 1961.

previous legislation almost ipsis verbis. African authorities are still called regedores, chefes de grupo de povoações and chefes de povoação, as before. Each one has 'the functions attributed to him by law, by local usage not contrary to law[1] and also such duties as are delegated to him by administrative authorities on whom he depends' (Article 3). Article 4 of the same decree provides for the recognition of councils of elders, as previous legislation had done. Elders - the paragraph to article 4 provides - will keep the title they had by custom. According to article 5 ~~of~~ the chefes de grupo de povoações and the chefes de povoação are directly subordinated to the regedores; the latter are subordinate to the administrative authority. As to the appointment of native authorities, article 3 paragraph 1 provides that the regedores are installed in office by the provincial commissioner or the governor-general, 'after the neighbours[2] have been heard in the customary way'.

Summarising the situation as to native authorities, one can see that they are still chosen according to tradition, have among others duties attributed to them by customary law, hold tribal councils and are subordinate to the Administration. Only some verbal changes have been made in the law and less pleasing expressions suppressed. There is no reference in the decree to chiefs being 'auxiliaries to the administration', although from article 3 quoted above it is obvious that this is what they are. Functions are said to be 'delegated' to them by the Administration and the former crude language about 'carrying out orders' is avoided.

(1) My italics.
(2) After the repeal of the Estatuto dos Indígenas Portuguese law as well as colonial officers were at pains to call Africans something else than natives. A variety of terms was then devised. 'Neighbours of the regedorias' (vizinhos das regedorias) is one such expression.

What is new in the decree on native authorities? Precisely nothing, except that representation of Africans in the Legislative Council is now part of the decree instead of being buried in an immense and obscure enactment as before. One might, however, to be fair, realise that in this respect the position of the legislator was not a happy one. African political institutions have had - and not only in Portuguese Africa - the ambiguous quality of being both traditional institutions and auxiliaries to the Administration. In their former role the 1961 legislation should, for the sake of coherence, have abolished them; as part of the whole Administration there was no reason why they should disappear. And as the Moreira laws, in spite of their pretence to the contrary, were more concerned with keeping the status quo than altering it, they remained.

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II - JUDICIAL SYSTEM

Earlier chapters mentioned that adjudication of justice in the 16th and 17th centuries, where Europeans were concerned, was a matter for the captain of the area, with appeals lying to the judiciary in Mozambique or in Goa. By the middle 18th century the judicial organisation of the territory had expanded and, at least in part, had passed into the hands of professional lawyers.(1) In the early 19th century justice was administered to Europeans by judges in town and from them an appeal lay to the judge (ouvidor) in the capital;(2) in criminal cases there was a right of appeal to the Criminal Board (Junta do Crime). The Justice Board (Junta de Justiça) decided finally in criminal cases; in civil cases an appeal lay either to the High Court of Goa (before 1804) or to Lisbon (after that date).(3)

As to Africans, the position depended on whether they resided inside or outside the prazos. In the prazos justice was a matter for prazo-holders. In the late 18th century Lacerda e Almeida referred to the death penalty and other forms of punishment of crimes being applied by prazo-holders. Whether they had the legal power to do so is doubtful to say the least, but the important point was that they were, on the best accounts available, the sole adjudicators of cases between Africans.

A century later it was quite clear that prazo-holders held no more than civil jurisdiction over settlers in their prazos. In a byelaw dated 1853 reference was made to the fact that prazo-holders could not be deprived of their right to try civil cases, voluntarily put to them by the

(1) The composition of the court was mixed: lawyers, the captain-general and some army officers.
(2) In the capital there was also the juiz de fora with civil and criminal jurisdiction over cases arising in his area.
(3) J. Teixeira Botelho, História militar e política dos portugueses em Moçambique, Lisb., 1934, vol.I, pp.579-80.

African colonos, as this was 'one of the sources of income of prazo-holders';[1] criminal jurisdiction, on the other hand, was held by the judge of the area exclusively.

In towns the position was different: Throughout the 19th century there were certain authorities - the capitães-mores de milandos[2] appointed from among the respectable men (homens bons) of the district who were acquainted with African customs-who had in the towns the same powers which prazo-holders held in their lands. They tried civil cases, when both parties were Africans, with the advice of native assessors;[3] criminal cases were beyond their jurisdiction.[4]

The present system

In one sense the judicial system applicable to Portugal and her overseas territories can be described as unitary.[5] The Supreme Court (Supremo Tribunal de Justiça) has jurisdiction over the whole of Portuguese territory; Angola and Mozambique (and, until recently, India) are judicial districts on the metropolitan model with a High Court (Tribunal da Relação) each; Guinea and Cape Verde Islands belong to the judicial district of Lisbon.[6]

(1) 'Regulamento para o capitão-mor da vila de Quelimane e seu termo, 1853', Article 7 (J. Almeida da Cunha, op.cit., also Albano de Magalhães, 'Apontamentos sobre milandos, colhidos pelo Presidente da Relação', in Relatórios e informações (Anexo ao Boletim Oficial de Moçambique, 1910).
(2) A lower rank in the hierarchy was that of Sargento-Mor.
(3) Acquaintance with customary law remained superficial in spite of the fact that attempts at its compilation date back to the early 19th century (see Appendic C).
(4) 'Regulamento....' (approved by portaria dated 4/6/1853), Article 6.
(5) But the system is not unitary in the sense of applying equally to all kinds of persons (see below pp. 139, 140).
(6) Macau and Timor, until 1961 part of the judicial district of Goa, now belong to the district of Mozambique.

Judicial districts, whether metropolitan or overseas, are divided into areas called comarcas, each with its own judge. Comarcas in their turn are divided into julgados municipais, comprising a number of julgados de paz. To this basic organisation of the territory a number of special courts (tribunais especiais) may be added.(1)

In Africa this judicial organisation is, at its lowest level, inextricably connected with the administrative organisation, the judge of a julgados municipal (the juiz municipal) usually being the administrative officer of the area.(2) Until 1961, when the status of native (indígena) was abolished,(3) jurisdiction to try suits between Africans fell exclusively on the juiz municipal(4) a state of affairs which made it possible for apologists of the regime to argue that Africans were tried by the same courts as Europeans. The assertion was, however, far from true because, whenever one or more parties were Europeans, the role of the juiz municipal (that is, the administrative officer) was limited to preparing the case for the judge and presiding over any attempts at conciliation that might take place; but in the case of Africans, he had full jurisdiction in civil cases and a limited jurisdiction (up to two years imprisonment) in the case of crimes.(5) Administrative officers could apply

(1) Such as military, administrative, labour, children's, etc. The Constitution in its article 117 forbids the creation of special tribunals for trying particular categories of crimes 'except if these are fiscal, social or against the security of the state'.
(2) A situation common to British Africa where magistrates of subordinate courts were administrative officers of a certain grade.
(3) See ante pp.130 et seq.
(4) Helped by two African assessors who inform him on points of customary law.
(5) Other special features in the case of suits between Africans were: simplified procedure, presence of assessors, and the requirement that sentences to two years imprisonment be confirmed by a higher court.

Portuguese law as much as customary law, their jurisdiction being solely determined by the nature of the parties.(1)

The decree 43 898, of September 6th, 1961, reformed the tribunais municipais and took one or two steps towards the unification of the judicial system. I shall now summarily describe the main provisions of the decree 43 898, to take the conclusion that it does not in fact go nearly as far as its author claims it does.

Articles 1 and 2 of the decree provide for the structural relationship between administrative and judicial divisions of the territory. Judicial comarcas of overseas territories are divided into julgados municipais; the latter are divided into julgados de paz. To each concelho or circunscrição(2) corresponds a julgado municipal and to each freguesia(3) or posto administrativo(4) corresponds a julgado de paz. The court exercising jurisdiction in each julgado municipal is a tribunal municipal; the court exercising jurisdiction in each julgado de paz is a tribunal de paz. Tribunais municipais can be of the first or of the second class.

Article 8 proceeds to state that municipal judges are to be qualified judges but adds that whenever these are not available district commissioners may take their place. The role of juiz de paz, on the other hand, is always performed by a non-lawyer, the district officer (chefe do posto) of the area (Article 10). Municipal judges are subordinate to the judges of the comarca to which the julgado municipal

(1) J. Silva e Cunha, Administração e Direito Colonial, Lisb., 1955, p.541.
(2) A Concelho is an administrative division with a predominance of urbanised population; a circunscrição is a predominantly rural area, (see ante p. 124).
(3) A division of the concelho.
(4) A division of the circunscrição.

belongs, while its juizes de paz are sub-ordinate to the juizes municipais. (Article 12).

The criminal jurisdiction of municipal judges (entitled to pass sentences up to two years imprisonment) does not at present vary with the race of the accused. In this respect the decree undoubtedly improves on the situation as it stood before 1961,(1) although one may comment that it is only logical that where the same law applies (the Penal Code, 1852, is applicable to all sections of the population),(2) the jurisdiction of the court applying it should not vary.(3)

It is with regard to civil jurisdiction that the decree 43 898 fails to innovate. Article 23 provides that the municipal judge can prepare and judge any civil cause 'whatever its value' if the law applicable is un-codified customary law. The same judge has only limited jurisdiction in the remainder of civil cases: 50.000$00(4) in the case of municipal judges of the first class and 20.000$00 for municipal judges of the second class.(5) In other words, justice applicable to Africans is still very much a matter for the administrative officer, while Europeans can resort to judges in a much wider range of situations.

(1) See ante p.137.
(2) The Penal Code, 1852, has always been applicable to Africans but subsequent legislation recommended that the particular position of Africans should be taken into account. The law at present in force (decree 43 897 of the 6th April, 1961) provides that the same penal laws apply to all but that the judge, in giving his judgement, should take into account the 'social status and the personal laws of the accused' (Article 10).
(3) As to the juizes de paz, these have mainly a conciliatory role but may also try petty offences. They also have powers of arrest in cases where the law permits arrests without a warrant; they prepare cases occurring in their areas for the juiz municipal and enjoy whatever powers may be delegated to them by the juiz municipal.
(4) Approximately £770.
(5) There is no right of appeal if a case does not exceed 20.000$00 and 10.000$00, respectively (Articles 38 and 57).

Municipal courts in overseas territories follow the general rules of procedure applied by other Portuguese courts, except for the fact that in suits to which non-codified customary law is applicable[1] procedure is much simplified[2]. No proof which is not acceptable to Portuguese law is admitted in such cases; the parties may or may not (as they wish) be represented by lawyers[3].

Higher courts can, in cases specified in the law, annul any judgements passed by the municipal courts. Appeals lie from judgements passed by municipal courts whenever (in criminal cases) the value of the cause exceeds 20.000$00[4] or 10.000$00[5].

It will be noticed that at no stage did the Portuguese recognise African courts. Justice by Europeans has always been the only justice available to Africans if they chose to put their cases before the authorities. Yet the judicial system was not unitary either and has not become so in recent years; the contention that 'there is no distinction whatsoever between courts on the basis of the status of litigants'[6] is not, as yet, justified.

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(1) Where customary law is codified the rules of procedure do not differ from ordinary rules of procedure. But it must be noted that there are at present no codes available. The latest projects (civil and criminal), prepared in 1942 by Dr. G. Cota, were thought to be too general and were never officially adopted. For a survey of the role of custom in Portuguese law and the attempts made at its codification, see Appendix C.
(2) Article 47, No.4.
(3) The previous law, the Estatuto dos Julgados Municipais, did not allow the presence of barristers in cases between Africans (Article 13).
(4) In the case of municipal courts of the first class.
(5) In the case of municipal courts of the second class.
(6) Preface to the decree 43.898, 6-9-1961.

PART IV

THE 19TH AND 20TH CENTURIES

PRAZOS, LAND COMPANIES AND STATUTORY LAND LAW

CHAPTER X

PRAZOS AND LAND COMPANIES

A) PRAZOS

Under the influence of liberal ideas imported from France a number of decrees were passed in Portugal throughout the 19th century aiming at freeing the land and liberating its inhabitants. The physiocrats, too, had for some time been preaching the primacy of agriculture as a source of wealth for nations[1] and the need to abolish any laws and practices which limited ~~the~~ full ownership of the soil or hampered ~~the~~ free circulation of products. Political liberalism and economic physiocracy made excellent bed-fellows in Portugal as elsewhere and legislation of the time reflects the convergence of such thinking. Old privileges,[2] personal services, certain tributes in kind, were abolished in 1821; while duties collected on roads and rivers were held to prejudice circulation of products and were abolished as well.[3] The prazo system could not remain unaffected by the winds of change.

In 1822 it was felt in political circles that statutes (cartas de foral) which had provided for the rights and duties of rural communities since the early years of the kingdom were oppressive to agriculture;

(1) The title of one of the Economic Memoranda (Memórias económicas), published by the Academy of Science of Lisbon in 1789 (4 volumes) is typical of this trend: 'A memorandum on the preference which in Portugal should be given to agriculture as opposed to industry' ('Memória sobre a preferência que em Portugal se deve dar à agricultura sobre as fábricas'), by D. Vandelli, vol.I, of the Memórias. The theme runs through most of them.
(2) e.g. the feudal right of a landlord to require peasants on his land to grind their wheat in his watermills or bake their bread in his ovens; or the privilege of selling his wine before anybody else.
(3) Decrees of 10/4/1821 and 20/3/1821.

rents of all kinds were reduced to half, when not altogether abolished;[1] vacant lands, unless donation to a private owner was proved, were held to belong to the people of the area collectively. Other important steps were taken concerning mortmain property (consigned to a religious purpose or held in the hands of certain families or members of a family) but such legislation was not decisive as it was revoked by restored absolutism some years later.

A decade after, legislation went even further. One of the most important decrees of the liberal period was that of the 13th August 1832 according to which enfiteutas were henceforth considered full owners of the lands they had been occupying,[2] while all rents and charges due by virtue of any contract of enfiteuse were abolished. Owners could in future dispose of their lands in whatever way they wished.

Somehow the decree was not put into execution in Mozambique and prazos remained a feature of the country. But only a few years later a new enactment[3] considered that prazos were responsible for depopulation and lack of cultivation and that enfiteutas often lacked indispensable capital; it was therefore decided that no new concessions of prazos should be made and no vacant prazos should be re-allotted.[4] In future, grants of land should not exceed one square league and were to be cultivated within one year.[5] If new concessions of prazos were in fact made, they would be null and void and the public authority granting them would be answerable for so doing.[6] Nevertheless, and in spite of these provisions,

(1) Right to collect rents was not recognised if based merely on immemorial possession and not on statute.
(2) Articles 8 and 12.
(4) Portaria dated 1st June 1838.
(3) Decree of the 6th November 1838.
(5) Portaria of the 28th November 1838.
(6) Decree of the 6th November, 1838.

the system continued to survive.

In 1854, considering once more that the old system served no useful purpose and merely prevented the development of agriculture, the government abolished it in Mozambique; the land thereupon reverted to the Crown as 'free land' (i.e. free of any charges upon it) and Africans living on it were freed too.[1] Africans would henceforth be subject to the payment of a hut-tax (imposto de palhota) in money and kind, in lieu of the 'arbitrary'[2] and compulsory work they were forced to do. Any African who had been cultivating land in a prazo became full owner of such land, provided its area did not exceed 50 hectares.[3] Enfiteutas were given leases of land as compensation.

Hut-tax was never collected. The decree of 1854 was not enforced[4] and did not alter the existing situation; the only new development was that hereditary donations for three lives were replaced by leases for years.

In 1880 the government, bearing in mind on the one hand the laws in force on slavery and on the other the abuses of the lessees and their ill-treatment of Africans, as well as the fact that the state derived only a minimal revenue from the prazos,[5] once more declared the system abolished[6] and reiterated the provisions of the decree of 1854. Prazos for lives were replaced by a system according to which the right

(1) Decree of the 22nd. December 1854, articles 1 and 2.
(2) The term is used by an eminent contemporary, Francisco Maria Bordalo (Ensaios sobre a estatística das possessões portuguesas na Africa Ocidental e Oriental, na Asia Ocidental, na China e na Oceania, Lisbon, 1859, p.246).
(3) Decree of the 22nd December, 1854.
(4) For reasons of force majeure, among which the prolonged and repeated wars in Zambezia, the execution of this decree remained suspended for twenty-six years (prologue to the decree of 27/10/1880).
(5) Prologue to the decree of 27/10/1880.
(6) Decree of the 27/10/1880, article 1.

to collect tribute in a given ex-prazo was granted for three years to the highest bidder.

It is to be noted that, as far as Africans were concerned, it made little difference whether the European was a lessee of the tribute or a lessee of the land, since the system continued to operate in much the same way. Ex-prazo-holders, on their side, continued to call themselves prazo-lessees (arrendatários de prazos), thereby amplifying their powers(1) beyond the provisions of the law.(2) The new legislation also provided for freedom of trade: no ex-prazo-holder could restrain any person from settling in 'his' prazo and trade with Africans therein, unless by doing so the newcomer was preventing the prazo-holder from exercising his rights.(3)

The decree of 1880 was only partly executed. While some prazos were divided up and distributed in lots, cases also occurred of leases being extended for a much longer period than that foreseen in the law.(4) Attempts made in 1883(5) to replace mussoco by a hut-tax failed once again and the old arbitrary tribute continued to be collected.

In 1886 leases of mussoco were regulated: their duration was fixed at three years and lessees were expressly forbidden to ill-treat Africans, to require them to perform unpaid jobs(6) and to prevent them from selling

(1) Strictly speaking, they were lessees of the tribute (mussoco), not lessees of the prazos.
(2) J.Azevedo Coutinho, 'Governando a Zambézia - Campanha dos prazos de Sena contra o Cambuemba', in O Mundo português, Lisbon, 1941, Nos.76-88, p.149.
(3) Portaria 30, 10/2/1880.
(4) In 1885 the lease of the prazo Maganja da Costa was extended for 32 more years; in 1886 that of prazo Mahindo was extended for 32 years. (R. Ulrich, Economia Colonial, Coimbra, 1910, p.331).
(5) Decree of the 5th July, 1883.
(6) Except in the case of 'public utility'.

their goods freely.[1] Once more these provisions failed to be strictly observed.[2]

At this stage a tendency was beginning to be apparent for prazos to be exploited directly by the government, In 1887 five prazos were granted to five civil servants, followed by three the year after. Lessees lodged a protest against this state of affairs and the government decided to have the whole matter investigated by a commission of enquiry.

Before discussing the recommendations of the commission it is useful to look briefly into the main criticisms levelled by liberal thinkers at the system, generally considered a defective legal institution lending itself to abuses.[3] Legislation of 1832 by minister Mousinho da Silveira considered the system contrary to freedom and equality;[4] laws of 1838 by Sá da Bandeira criticised the inadequacy of funds of prazo-holders to explore such vast territories; the decree of 1854 of Viscount of Atouguia blamed the abuses of enfiteutas, in their turn responsible for the backwardness of agriculture; and a decree of 1875 set itself to terminate what it called the 'servile status' of Africans.

The system provided no security, others argued(5) A prazo-holder with no children would be deprived of his prazo if his wife died, even if the couple had always fulfilled its obligations. On the other hand

(1) Portaria of the 25th November 1886.
(2) See below pp. 153-4.
(3) By no means a new accusation. By 1667 the Jesuit Barreto referred to the 'atrocities' practised by prazo-holders, and over a century later Lacerda e Almeida wrote in strong terms about their cruelty and arbitrary justice.
(4) Because land was in the hands of only a limited number of families. The decree added that 'without freedom of the land, political freedom is meaningless'.
(5) Inter alia, F.M. Bordalo, op.cit., p.246.

any woman holding a prazo running its third 'life' knew that, even if she had daughters, whatever improvements she made on the land would only benefit strangers to the family after her death. Concessions of prazos could also be revoked on a number of grounds (failure to pay rent or provide services required by the state, failure to cultivate) and this too added to a feeling of insecurity.(1)

When the system evolved from one of long-term leases of land (prazos) to one of short-term leases the right to collect tribute (arrendamento do mussoco), insecurity of tenure was only aggravated. Many prazo-holders at this stage abandoned their lands, which were then taken over by neighbouring chiefs; in other instances, where prazos had been more lucrative, prazo-holders nominally kept them (hoping to reconquer them one day) and paid tributes both to the Portuguese public treasury and to invading chiefs who allowed their slaves to remain on the land.(2)

The commision of inquiry of 1889 commented unfavourably on these and other consequences of the legal developments of the previous fifty years: liberal legislation, it said, had abolished servitude and enfiteuse but had substituted nothing for them. By allowing leases and collection of tribute to remain the law maintained, in practice, the status quo which it attempted to abolish. A major evil of the system, the commission thought,(3) was that, while in the past enfiteutas occupied their lands on legitimate titles, the arrendatários who had in fact succeeded them bore no legal relation to the land they were occupying. They were mere lessees of the collection of a tribute (arrendatários do mussoco).(4) The result was that if an arrendatário decided to cultivate

(1) A.N.B.Villas Boas Truão, Documentos para a história das colónias portuguesas - Estatística da Capitania dos Rios de Sena, Lisbon, 1889, p.9.
(2) A.C.P. Gamitto, op.cit., p.67.
(3) Relatório da comissão encarregada de estudar as reformas a introduzir no sistema dos prazos de Moçambique - chairman, J.P. Oliveira Martins, Lisbon, 1889, p.47.
(4) The system is reminiscent of the vectigal of classical Rome (H.F. Jolowicz, Historial introduction to the study of Roman law, Cambr., 1932, p.37).

a plot of land in 'his' prazo (which he could do as a first occupier) he was taking a risk, since on termination of his lease the prazo might pass into somebody else's hands; and not only did this apply to the land but also to the Africans who were cultivating 'his' property and were the source of its wealth. As it would be both iniquitous and absurd to penalise hard-working arrendatários, the government were extending leases without in fact having legal authority to do so.

The whole system, the commission found, was detrimental to the creation of estates (fazendas) and consolidation of capital investments on land; it further encouraged the constitution of 'parasite' prazos, which were the real 'cancer' of the system.

The report of the commission also provides interesting information on points of fact. Prazos, it found, could be classified into three categories. A handful of them, mostly along the coast near Quelimane and in the Zambezi delta, had attained a considerable degree of agricultural and industrial development. For all purposes one could describe these prazos as true colonial estates where labour and activity were the keynote. Exotic cultures bore witness as to the iniciative of the prazo-holders.

A second category comprised prazos situated in areas around those just mentioned - prazos which lay further away from natural means of communication and showed little progress. These the commission called 'fiscal' prazos because collection of mussoco, and not cultivation, was the primary aim of the enfiteuta.(1) An old tradition of absenteeism and vain ostentation prevailed; the arrendatário lived on the tribute he collected, idle and carefree, granting Africans on his land as few rights as he possibly could.(2)

(1) The term, like that of prazo, though inaccurate in the face of the legislation in force at the time, continued to be used by practically every writer.
(2) Report of the Commission, p. 42.

Finally, there were the 'feudal' prazos, on the periphery of all the others, enveloping them all, stretching as far inland as the jungle. The dominant aim here was neither to cultivate nor to collect tribute but to rule over one's Africans who had been militarily organised, and to engage in constant raids and lootings of alien lands. Customs were as barbarian as could be and unbounded by any superior power.(1)

The Commission made far-reaching and interesting recommendations. Since most of them were incorporated into the decree of 18th November, 1890, it will be more profitable to examine the decree itself.

The decree divided prazos into two kinds: 1) In areas not yet pacified and over which Portuguese sovereignty did not make itself felt, arrendatários of mussoco should limit themselves to collecting it and trying to assert Portuguese sovereignty. Military occupation and complete submission of Africans would gradually take place as resources of the state became available; these prazos would eventually be governed by the common laws of the kingdom: 2) In areas already pacified, prazos would be granted to the highest bidder for 25 years; rent would increase proportionally to the increase of population in the prazo.

To avoid old evils, a provision in the decree made it compulsory for the arrendatário of the second category to enter into a contract of enfiteuse(2) with the state, relatively to an area to be determined according to the population of the prazo. Mussoco(3) was to be collected half in

(1) Ibidem, p. 42.
(2) It will be recalled that in 1867 the Civil Code was put into execution and that it altered in some substantial respects the old contract; namely, contracts for 'lives' ceased to be allowed and the lessee (enfiteuta) was given the choice of acquiring full ownership by paying twenty times the amount of rent (foro) (see ante, Chapter IV); old feudal charges (both services and tributes) were abolished.
(3) The idea of having it replaced by a hut-tax was abandoned for the time being in spite of the strong views on the subject expressed by the Commission.

money and half in kind.[1] It was the duty of arrendatários to help inhabitants to develop their land by providing them with agricultural implements and allowing them to sell their products freely.

The decree thus created a situation which was intermediate between the position as it existed before 1880 and the one which prevailed after that date. Lessees had been enfiteutas in the first place and arrendatários of a tribute after 1880. With the 1890 decree they became both: they were arrendatários of the tribute collected in a certain area and enfiteutas of a restricted zone within that area. As they were recognised as 'agents of the public authority' (agentes da autoridade), one can see that the door was open for them to exercise those same sovereign powers which were once the essence of the system.

But if the decree temporised with the present, it contained some daring and interesting provisions for the future. The system of prazos was allowed to remain only as a temporary measure. As soon as half the area of any prazo, whether occupied by Europeans or by Africans, was under the legal system of full ownership[2], the whole prazo ceased to exist as such. At that stage, Africans could cease to pay mussoco.[3]

(1) The Commission found that the law as it stood ('Conditions of leases' (Condições de arrendamento), dated 13th May 1883) was a main source for the excesses of the arrendatários. One article fixed the tribute at 800 réis; another gave the arrendatário the right to require Africans to do any work for him, at the rate of 400 réis for adults and 200 réis for minors, per week; a last article considered a measure of cotton cloth worth 200 réis. The Commission commented that the first requirement might become onerous in places where currency was short; the second and third were iniquitous and vexatious. In the first place, many Africans were relatively well-off and of high status in their own society and were vexed when made to work as porters or bearers in exchange for cloth they often did not need or want; secondly, to attribute to a measure of cotton cloth the value of 200 réis and give it in payment for services was tantamount to theft since such cloth could be bought by half that price in the markets of Quelimane (op.cit.,p.53).
(2) By remission of rent (foro), occupation for a certain number of years or purchase.
(3) The mussoco, according to the Commission, should be viewed as a service and not as a tribute (because not proportional to one's income); as such, it was logically incompatible with full ownership of land (op.cit., p.42).

which was replaced by the common tributes in force in the kingdom.

None of this was to happen. The objective of creating an African rural class once the system of prazos was extinguished was not attained because property did not become fragmented and the constitution of large companies throughout the 20th century made salaried workers of those Africans whom the decree wanted to see as small independent cultivators. 'The inexorable laws of the capitalist regime made a mockery of the plans of the sociologist'.(1)

The sociology of the prazo system during the 19th and 20th centuries is as worth looking into as its legal history because practically every law passed remained no more than a platonic declaration of intent, obeyed by no one. The 19th century, in particular, was marked by the unruliness of prazo-holders, much more powerful (not only collectively but also individually) than the government of the colony. During the best part of the 19th century continuous wars, sometimes lasting for several generations, were waged by the government against one or another of the dominant families of landowners.

Contemporary observers wrote vividly and at length about the undisciplined prazo-holders. Arrendatários did not pay rents in arrears, wrote one author, and there was nothing the government could do except to prepare for a military campaign(2). One arrendatário, ordered to make

(1) J.G. Santa Rita, "Oliveira Martins e a política colonial", Revista do Gabinete de Estudos Ultramarinos, Lisb.,1952, Nos.5-6, p.53.
(2) Carl Wiese, 'Expedição portuguesa a Mpeseni', Bol.Soc.Geogr.Lisboa, 10ª Série, No.6, 1891, p.252.

overdue payments, threatened the authorities, including the governor, wrote another[1]. A lieutenant bearing a warrant against a prazo-holder was forced by the latter to pound maize for two days[2]. In short, prazo-holders missed no opportunity of expressing their utter contempt for government's orders[3].

In these circumstances Portuguese sovereignty over the territories occupied by prazo-holders could only be precarious, to say the least. A secondary effect of the arrogance of landowners was that it influenced Africans' attitudes in a way which was detrimental to the interests of the state: 'Only the Portuguese government believes that Africans are Portuguese, while they themselves do not even suspect it and owe allegiance to their landlord and to no one else(...) These territories are Portuguese only because the arrendatários have not yet set their minds to selling them to a foreign nation'[4].

It would be pointed out later, when prazo-holders had already been brought to heel and the situation was by no means as bad as it had been in the 19th century, that, since supervision remained ineffective, the system tended to weaken the authority of the government. Prazos, furthermore, remained water-tight compartments with their own system of taxation and labour relations - a fact which made the adoption of measures of a general nature (regarding for example, welfare of Africans and their ownership of land) almost impossible[5].

(1) Torres Texugo, A letter on the slave trade, London, 1839, p.49.
(2) F.G. Almeida d'Eça, História das guerras no Zambeze, 2 vols., Lisbon, 1953-4, p.265.
(3) C. Wiese,'Expedição.....', p.261.
(4) C. Weise,'Expedição.....', p.262.
(5) Ernesto de Vilhena, Questões coloniais, Lisbon, 1910, vol.II, p. 549.

Apart from the inadequacies of the system from a political point of view, one ought also to mention its social disadvantages[1] vis-à-vis those populations whose progress it was supposed to promote. Labour relations and, to a lesser extent, collection of taxes are the two fields in which commentators had more criticisms to make. Authors agree that, contrary to law, labour was often paid in goods; work in excess of that prescribed by law was required; invalids, women and children were compelled to work; cultivation of certain crops was compulsory and their products acquired at minimal prices; Africans were compelled to sell their harvests to, and buy their goods from, the arrendatário exclusively;[2] violence and extortions were commonly practiced by labour-recruiting agents.[3] In neighbouring British territories poll-tax did not exceed 1s 6d while in Mozambique it amounted to 5s, a fact which made for relative injustice[4]. Again, in neighbouring countries all work was paid, while in Mozambique some forced labour was not[5]. Last but not least, restrictions to freedom to trade

(1) To say nothing of the economic argument; if prazos were handed in to the state, they might not become more productive but at least the state would derive from them "ten times more income than it was receiving under the prazo system" (Report by the governor of the Tete district, 1911-12, in Relatórios e Informações, annexe to the Boletim Oficial of Mozambique, 1913, p.9).
(2) Prof. Rui Ulrich, Economia Colonial, Coimbra, 1910, p.346.
(3) Such malpractices were, of course, not exclusive to Portuguese rule. One has only to remember the very similar charges levelled against the Belgian system at almost precisely the same time (1911) (D.K. Fieldhouse, The colonial empires, London, 1966, p.359).
(4) F.X.F. Castelo Branco, 'Relatório das investigações a que procedeu o Secretário dos Negócios Indígenas sobre a emigração nos distritos de Quelimane e Tete', in Relatórios e Informações, annexe to the Boletim Oficial of Mozambique, 1909, p.247.
(5) The law restricted compulsory unpaid work to one week per year and to certain purposes only (article 34 of the Regulamento of July 7th, 1892); but this limit was often arbitrarily increased (F. Aragão e Mello, 'Relatório da inspecção a alguns prazos do distrito de Tete', in Relatórios e Informações, annexe to the Boletim Oficial of Mozambique, 1911).

in neighbouring territories and indeed outside one's prazo could only aggravate matters further.(1)

The most far-reaching consequence of this and similar aspects of Portuguese rule was that Africans emigrated continuously for at least a century into Nyasaland, Rhodesia, Tanganyika and South Africa. Perusal of the Blue Books of some of these territories indicates that their African population greatly increased at the expense of Mozambique.(2) A report by the governor of Tete for 1908-9(3) specifies that in the previous two years no less than 70,000 Africans had emigrated into Nyasaland alone. Lord Selborne's 'Memorandum on the Mutual Relations of the South African Colonies' speaks of 90% of the labour in the Transvaal mines as coming from Portuguese East Africa(4). The result was that the Portuguese territory was in a state of decadence compared to Nyasaland ('a colony started in 1897 and not in 1504'),(5) Southern Rhodesia,(6) or even the independent country of the Ngoni chief Mpeseni(7).

B) THE LAND COMPANIES

After the Conference of Berlin of 1884-5 Portugal was faced with the need to occupy effectively those territories of Africa to which she

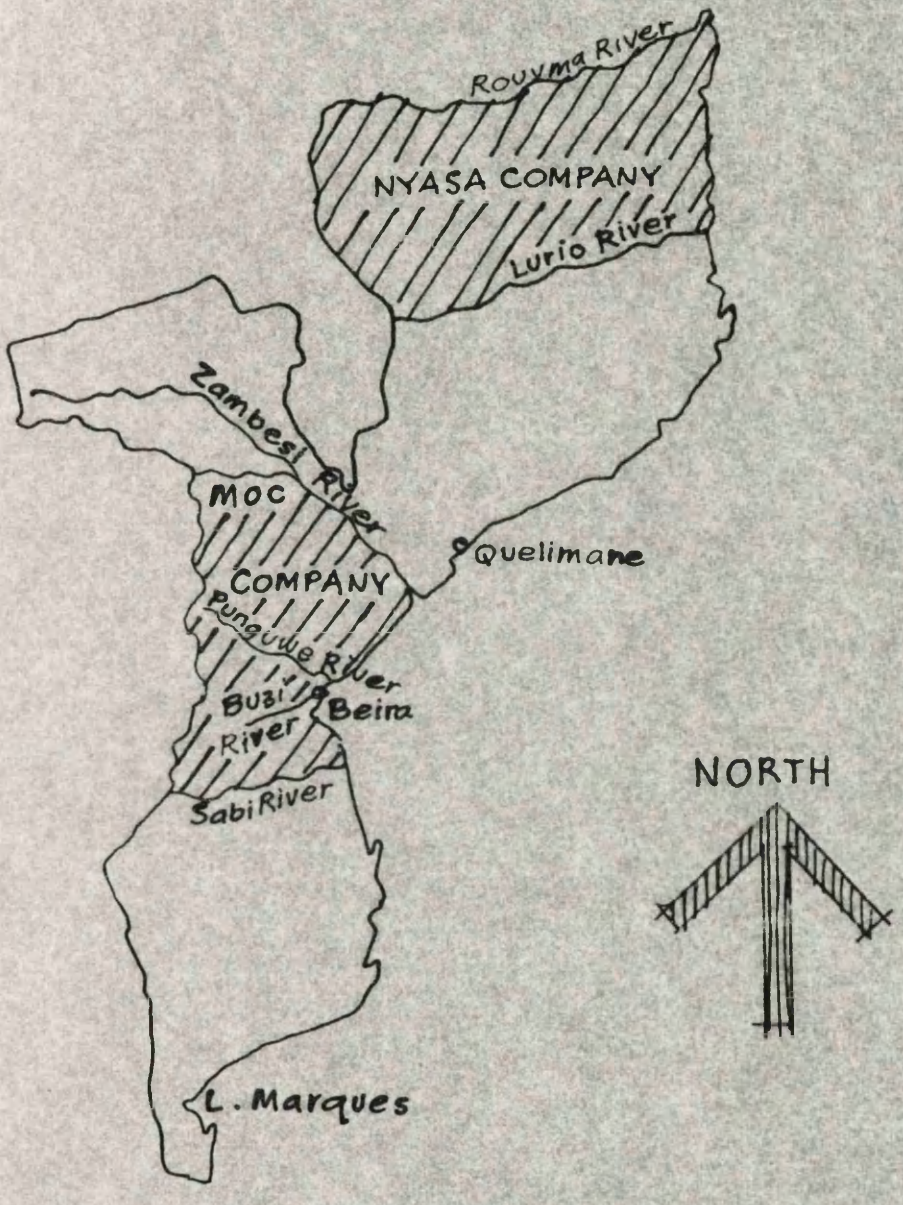
(1)F.X.F. Castelo Branco, op.cit., p.249.
(2) Carl Wiese, 'A 'Labour question' em nossa casa', Boletim da Sociedade de Geografia de Lisboa, No.6, 1907.
(3) The governor noted that in British territories Africans enjoyed several advantages: cheaper clothes, lower taxes and less work (Boletim Oficial of Mozambique, 1909, p.88).
(4) A Manual of Portuguese East Africa, compiled by the Geographical Section of the Naval Division, Admiralty, Lond.,1920,p.176.
(5) A.A. Silva Monteiro, 'Distrito de Tete - um plano de fomento e administração colonial', Bol.Soc.Geogr.Lisb, Nos.4 to 12, 1926, p.131.
(6) Report by the governor of the Tete district, 1911-12 (Boletim Oficial of Mozambique, 1913, p.24).
(7) Carl Wiese, 'Expedição....', p.411.

laid a claim. The method she adopted to satisfy her critics and implement the decisions of the Conference was neither new nor specifically Portuguese, it having been tried by all colonising countries at one time or another since the 16th century.(1) Portuguese companies were created and granted charters envolving wide privileges and responsibility for government in much the same way as other chartered companies elsewhere ~~did~~ in the ~~past~~ held, or were still holding, wide powers of administration ceded by their respective states.

In Mozambique identical charters were granted to two companies, the Companhia de Moçambique(2) and the Companhia do Niassa, but only

(1) Portugal too made use of companies holding a monopoly of trade at various periods of her history. Before the 18th century several companies had a more or less ephemeral life: the Companhia Geral do Brasil, the Companhia de Cacheu e Rios da Guiné, the Companhia do Maranhão, the Companhia dos Baneanes and the Companhia de Cacheu e Cabo Verde, In the 18th century, under the rule of the marquis of Pombal, companies flourished: Companhia da Asia Portuguesa, Companhia do Grão-Pará e Maranhão, Companhia de Pernambuco e Paraíba, Companhia do Comércio dos Mujaus e dos Macuas. Before 1890 other companies were created: Companhia para o Comércio do Algadão na India, Companhia Comercial de Lourenço Marques, Sociedade Patriótica dos Baldios das Novas Conquistas, Companhia da Agricultura, Indústria e Comércio de Moçambique, Companhia do Comércio do Ópio, Companhia Comercial de Goa, Companhia de Dili, Companhia Luso-Africana Oriental and Companhia de Timor. After 1890 a number of new companies were created, the most important of which were the Companhia do Niassa and the Companhia de Moçambique which alone held sovereign rights (companhias magestáticas) (A. Barros Lima, 'Dois documentos historicos', Documentário Moçambique, No.31, 1942).

(2)Powers were granted to the Companhia de Moçambique with the specific aim of neutralising the influence of the neighbouring British South Africa Company (Mário Costa, 'O território de Manica a Sofala sob a administração da Companhia de Moçambique', Boletim da Sociedade Luso-Africana do Rio de Janeiro, No.7, 1933).



MOZAMBIQUE BEFORE 1914

the former contributed to any significant extent to the development of the territory.

The Mozambique Company was incorporated by a charter of March 8th, 1888, for the purpose of acquiring a concession of the mineral rights[1] over the country comprised in the hydrographical basins of the rivers Pungwe and Buzi, between 16° 36' and 22° 50' latitude south (see map on page 156)[2]. It began with a capital of £40,000 in shares of £1, the whole of the money being available for working capital, as nothing was paid for the concession. Three years later the government granted the company, by royal charter, sovereign rights over the province of Manica e Sofala[3].

The company's concession was limited to a period of 50 years[4] but it could be rescinded in case of the insolvency of the company or its failure to fulfil the stipulations agreed upon. The provisions of the decrees setting forth the conditions in which the company was to operate could be modified or revoked at the end of 50 years and thereafter at the end of each period of twenty years.

(1) In this the company differed from other chartered companies whose main aim was to trade, either in Eastern goods (e.g. some of the 17th and 18th century companies) or in slaves (in the case of the West African companies of the 19th century).
(2) 175 million hectares altogether - that is, about 1/6 of the colony or one-and-a-half times the area of Portugal.
(3) Except when otherwise stated, information concerning the contents of charters is derived from the Manual of Portuguese East Africa (see p.181 , note (5),pp.154 and foll. James Duffy considers the Manual the best source for factual information on the land companies of Mozambique (Portuguese Africa, London, 1959, p. 353).
(4) The Acto Colonial, 1930, provided that no sovereign powers would henceforth be transferred to any company but respected existing rights; on expiration of the term of 50 years of the concession the Companhia de Moçambique automatically lost its charter and became an ordinary company.

The company had the character of a joint-stock company with limited liability, its statutes being subject to the approval of the government. It was considered Portuguese for all effects and had its headquarters and principal office in Lisbon. The majority of directors were always to consist of Portuguese citizens domiciled in Portugal.

Under the charter and the various decrees the Company exercised the following powers:

1) The administration and exploitation of the territories;

2) Exclusive right of constructing and working railways, roads, canals, sea or interior ports, wharves, docks, bridges, telegraphs, distributions of water and other works of public or private utility. Subject to the approval of the government the company might grant concessions for such constructions to financial syndicates.(1)

3) The (not exclusive) right of navigation on rivers defined by treaty and the transit of passengers and merchandise on the Pungwe, the Buzi, the Sabi and their tributaries and also by land roads where the rivers were not navigable.

4) Liberty to engage in all branches of commerce and industry permitted by laws. By the decree of May 17th, 1897, the company was given the power to reserve to itself the monopoly of any industry or branch of commerce or of subjecting the exercise of such industries or branches of commerce to special regulations, to be approved by the government.(2)

5) The right to issue shares, etc, and to establish banking concerns which, however, might not issue notes.

(1) E.g. concession for the construction of a railway, from Beira to British territory, was granted to a group of British capitalists (Manual, p.402).
(2) Regulations for the traffic in alcohol and in arms and explosives must be made to harmonise with those adopted in territories directly administered by the government.

6) Dominion over all lands belonging to the state and right to acquire land within or without the company's territory, without prejudice, however, to the special regime applicable to prazos. At the termination of the company's concession all lands cultivated by them were to remain their property. Although the company might transfer its land,(1) the government on the termination of the company's concession would receive an annual rent of 10 réis per annum per hectare, with the exception of the alternate blocks of land along any railway lines. The company was not allowed to transfer more than 5,000 hectares of contiguous land to any one person or company.(2)

7) Exclusive right of exercising and authorising the exercise of the mining industry, such concession to endure indefinitely while the mines were worked.

8) Exclusive right of coral, pearl and sponge fishing on the coast of the territory.(3)

9) Exclusive right of elephant hunting direct or by concession of licence.(4)

10)Collection of all contributions and taxes already in force. In addition the company could levy contributions of money or labour for works of public utility, but regulations relative to new contributions and taxes must be submitted to government approval.

(1) Transfer of land took the form of contracts of emphyteusis or aforamento (see ante, Chapter IV). Titles referring to these contracts should be registered but it was an essential condition that they should mention that the dominium directum belonged to the State, which ceded it to the company temporarily (Rui Ulrich, Economia Colonial, Coimbra, 1910, p.449.)

(2) The company was bound to give gratuitously to the government the land it might require for fortifications, military posts or quarters, and residences for judges and officials. The government also retained dominion over half the vacant land round towns.

(3) A comparable right was held by the one donatário of Angola, Paulo de Novais, with regard to cowries (see ante, p. 60).

(4) In this respect the charter rather agreed with African customary law.

11) The right to collect licence taxes for the entry, dispatch or transit of merchandise, subject to certain conditions, the most important of which was that there should be a preferential tariff of not less than 50% on goods produced in Portugal or its overseas possessions.

As to the duties of the company: the company was bound to bear allegiance to the Portuguese state and use the Portuguese flag; within the whole territory of the concession the government retained political supervision and reserved the right to intervene whenever it might consider such course indispensable to the safety of Portuguese dominion or the maintenance of order in conflicts of a political character.

The company was bound to comply with the clauses and conditions of treaties, conventions or agreements which the government had made or might make with any foreign state or power.(1)

Regulations of general interest must be submitted to the approval of the government, such regulations being considered as approved if no definite decision would have been taken in respect of them within the period of four months.

The government undertook to abstain during 25 years from collecting direct or indirect taxes in the territory of the concession; it was, however, to receive 10% of the shares of the company, and 7 1/2% of the total net profits of the company, to be increased to 10% whenever the dividend of the company's shares should be 10% or more.(2)

The company must organise and sustain land and sea police forces, but the government retained full liberty to garrison with military forces

(1) The right to make war and peace with non-Europeans, not granted to the Companhia de Moçambique, was a common prerogative of the chartered companies of the 17th century; during the 19th century the right was held inter alia by the British Royal Niger Company (D.K. Fieldhouse, The colonial empires, Lond., 1966, pp.153 and 213).

(2) Disagreements between the government and the company were to be submitted to an arbitration board.

any points on the frontiers of the territory; in the event of war the company must place at the disposal of the government the provisions, armaments and military material that it might possess.

The company was bound to respect all religious creeds and beliefs, as also the manners and customs of the natives when not contrary to humanity or civilisation.

Municipal organisation must be maintained in the districts of the territory where they existed at the time of the concession, and should be established in all towns of over 500 houses, with 100 families at least of Portuguese, European (sic) or Indian race.

Schools of primary instruction must be established in all towns of over 500 inhabitants, and the company undertook to establish agricultural and technical schools in the locality that might appear most appropriate.

On administration it was provided that the company was administered by a Council of Administration consisting of no less than eleven and no more than seventeen directors, the majority of whom must be Portuguese citizens. Three of the directors were nominated by the government, the others by a general meeting of shareholders. The managing director should have the confidence of the government. The registered office of the Council of Administration was in Lisbon, but foreign delegacies or committees were established in London, Paris and Brussels. The government was represented by a Commissioner who attended all meetings of the administrative and fiscal bodies.

The governor of the company must be a Portuguese domiciled in the territory of the company in Africa. He represented the company, carried out the orders of the Council of Administration and had the same powers as the colonial district governors in administrative and fiscal affairs. All the employees of the company residing in the territory were directly subordinate to the governor. The administration comprised a number of

departments.(1)

On the other hand the government (not the company) organised the judicial service in the territory of the company and appointed judicial magistrates, the expenses being shared equally by the company and the government. By a decree of December 23rd, 1897, the territory was divided into julgados or judicial circumscriptions. Native cases were judged according to local usages and customs, the territorial judge being assisted by the native chief and two of his councillors.(2)

Supervision by the government was entrusted to the Intendência do Governo at Beira and the Sub-intendência at Macequece. Public functions of a non-political character were committed to them - registry of births, marriages and deaths, and the duty of aiding the judicial service - but they must not interfere with the policy of the governor.(3)

For administrative purposes the territory was divided into circumscriptions (circunscrições administrativas), some of them comprising sub-circumscriptions.

Several sub-concessionaire companies were formed for mineral or agricultural exploitations at different times, of which the most important

(1) Secretariat, Treasury, Ports, Custom House, Post Office and Telegraphs, Public Works, Agriculture and Mines.
(2) It would appear from this description that the position of Africans in the territory of the company differed from that elsewhere in the colony in that legal cases were tried by the territorial judge and not by the administrative authority of the area, but I was unable to investigate this point further.
(3) Manual...p.61.

are at present the Sena Sugar Estates Ltd., (with headquarters in London)[1] and the Companhia Colonial do Buzi. Wide powers and privileges were transferred to these companies. The Companhia Colonial do Buzi, for example, was entitled to collect hut-tax from Africans, to demarcate within the area of the circumscription of Buzi all the lands it might wish to cultivate (on payment of a rent), to hold the monopoly of hunting in the circumscription, and to engage in agriculture, trade or industry in the whole area of the sub-concession.[2]

On the second of the chartered companies created in the 1890's, the Companhia do Niassa,[3] there is less to say, partly because its charter was (with very slight variations) exactly alike to that of the Companhia de Moçambique and partly because the company did not make itself felt in any significant way. Niassa had neither the mineral nor the agricultural expectations of Zambezia and Manica e Sofala and a series of difficulties, not the least of which was bad administration, prevented the Niassa Company from realising any useful exploitation besides the establishment of Porto Amélia as a centre of trade and administration.[4]

Granted for 35 years, the concession lasted until 1929. Of the total shares issued by the Companhia do Niassa more than one half was held in 1920 by a British company, the Nyasa Consolidated.[5]

(1) Half the sugar exported by the Portuguese colonies is refined at the Refinaria Colonial, set up in Lisbon by Sena Sugar Estates (J.A. Taveira, 'A. Sena Sugar Estates', Documentário Moçambique, No. 33, 1943).
(2) F. Santos Graça, 'Companhia Colonial do Buzi - monografia', Documentário Moçambique, No. 32, 1942.
(3) Its principal source of capital was England.
(4) J. Duffy, op.cit., p.92.
(5) In 1916 some six-sevenths of the Portuguese company's total debt was due to the Consolidated Company (Manual....p.171).

The agricultural resources of the territory were left almost entirely undeveloped and only a small number of agricultural concessions were granted. No systematic mineral survey of the territory was made and not much prospecting work was done.(1) The dream of a railroad from the port to the lake never came true; in its absence there was scant attraction for settlers and merchants. Niassa is still one of the most undeveloped regions of the colony.

Apart from the two great concessionary companies, a third company - the Companhia da Zambézia - was created in 1892. Between them the three land companies controlled more than two-thirds of the area of Mozambique in 1900.

The Companhia da Zambézia did not receive a charter from the Portuguese government and therefore was not responsible for the administration of the territory comprised within its concession. It was the largest of the three land companies, covering over 90,000 sq.kms in the Zambezi region. Like the other companies, the Companhia da Zambézia was formed primarily to exploit the mineral resources of the area.

The initial capital of the company was £108,000 but there were further accessions of capital at various times; its chief investors, more diversified than those of the Niassa and Moçambique companies were firms and individuals in South Africa, Germany, France, England and Portugal . The initial capital of the company being too small for the exploitation of so large a territory, the company entrusted the development of portions of its concession to subsidiary bodies. Mineral concessions were granted to various concerns while the exploitation of some of the numerous prazos, which had been granted to the company for purposes of agricultural development, was entrusted to various concessionaires(a handful of prazos were worked by the company itself). Further,

(1) Manual.....p.171.

the right to construct a railway to the river Ruo was entrusted to the Companhia dos Caminhos de Ferro da Zambézia, and contracts were entered upon with the African Trans-continental Telegraph Company for the construction of the international telegraph line across the territory of the company.

In 1894 the company received a concession of the prazos east of the river Shire, and was invested with the numerous derelict prazos in other districts which were not then in the occupation of any authorised holder. The condition of the greater part of the territory was at the period in question much disturbed; the attitude of Africans was hostile and the first consideration of the company was to introduce some order into the existing chaos.(1)

The Companhia da Zambézia was granted very wide powers. It could exploit any gold, coal or other mines in the area of the concession and use any forests belonging to the state in the same area; it was entitled to apply for any vacant lands up to the limit of 100,000 hectares; with the government's permission it was allowed to transfer some of its mining privileges, as well as areas of land exceeding 3,000 hectares:(2) It was entitled to exploit telegraph and telephone lines which it might set up; it had the monopoly of pearl and coral and other fishing as well as that of elephant hunting in all the territory of the concession; it was entitled to administer the prazos in the area; it had a share in the revenue of customs in the Zambezi region whenever they exceeded those of 1893, plus an increase of 20%; finally, the company was allowed to recruit African labour for the Rand mines.

(1) Manual.....p.165.
(2) For the transfer of smaller areas no permission by the government was required. The transferee, whether an individual or a society, must be subject to Portuguese Law.

As a counterpart to these privileges the company was under the obligation to give the state a part of its profits; to pay an annual rent for the prazos; to repress and punish smuggling in the area of the concession; and to build a submarine cable and telegraph lines.(1)

In short, the Companhia da Zambézia had powers which were almost as wide as those of the Companhia de Moçambique, with the advantage (from its point of view) that it was not responsible for the administration of the territory as a whole. It is true that it did not have 'dominion' over the territory but it enjoyed one and perhaps the most important of its manifestations - the power to collect taxes. This was so not by virtue of a charter (which the company did not possess) but because the privilege was inherent in the prazo system and the company became the biggest of prazo-holders.

The effect of company rule in Mozambique (leaving aside the Companhia do Niassa, which a former governor stigmatised as a disgrace to the country) can now be looked into in some more detail.

From the point of view of its shareholders (mostly foreign) the Companhia de Moçambique was a failure, a small dividend having been paid only in 5 years out of 50.

Since 1942 - when the company ceased to have powers of administration and became an ordinary company(2) - its policies have led to a series of financial disasters. Schemes have been embarked upon which have no

(1) António Santos, 'A Companhia da Zambézia', Documentário Moçambique, No.41, 1945.
(2) This, incidentally, led to nationalisation of capital: whereas it had previously been almost completely foreign, it now became Portuguese.

connection with each other[1] and would have required separate organisations; an expensive administration machinery has been maintained which could be justified only in the past when taxation could be resorted to, to solve financial difficulties.

Particularly important from the point of view of the Portuguese state was the fact that company rule, as many observers have pointed out, made for 'de-nationalisation' of the territory. Capital was always predominantly foreign; in the particular case of the Companhia de Moçambique, British currency was in circulation in the territory and the use of the English language was widespread.[2]

While the Companhia de Moçambique was a disappointment to its stockholders and even, to a lesser extent, to the Portuguese government, it produced some beneficial results to the colony. A beautiful town, Beira, and an excellent port arose from the wilderness; the territory of Manica e Sofala was divided into circumscriptions and administered; cultivation of 'rich' crops, particularly cotton, was started; industries from agricultural products[3] were set up; conditions permitting the settling of the area by a white population were created; railway and roads were built both to Rhodesia and to the port of Beira. From the point of view of Africans the benefits were far from substantial (Duffy considers them 'less than negligible')[4], but one can mention the setting up of widespread medical and agricultural assistance and institutions of credit.

(1) Such as the construction of a luxury hotel in Beira, the supply of water to that city and the participation with one-third of the capital of a mining company, the Companhia Carbonífera de Moçambique - none of them a promising investment in itself (Cunha Leal, Peregrinações através do poder económico, Lisb., 1960).
(2) A. Barros Lima, 'Dois documentos históricos', Documentário Moçambique, No.31, 1942.
(3) By far the most important is the sugar industry, exploited by two large companies, sub-concessionaires of the Companhia de Moçambique: the Sena Sugar Estates Limited and the Compania Colonial do Buzi.
(4) Op.cit., p. 93.

As to the Companhia da Zambézia, it remained inactive for many years[1], having inherited the evils of the prazo system. The company was granted no less than a whole province[2] of over 90,000 sq.kms, constituted by a number of prazos themselves too large to be adequately administered.

In 1912 it was found[3] that in the whole area of the concession the company had one cotton plantation in Benga, near Tete, which was half-abandoned, and one sisal plantation in Mutarara; sub-lessees of the company with large areas under their control (Hechinger - 15,000 sq.kms; Gallian - 10,000 sq.kms; Carl Wiese - 25,000 sq.kms;) 'did not cultivate a square inch, except perhaps some garden for their own use',[4] while the most important of the sub-concessionaires (Sena Sugar Estates Limited)[5], 'used its prazo Angónia[6] as a reservoir of labour for its plantation in the Zambezi delta and was not interested in agriculture'.[7]

In short, there were prazos with 'tens of thousands of square kilometres' where there was not 'a single hectare cultivated by the lessee, not a school, not a path where one dared to drive a car....'[8] As to the Companhia da Zambézia itself it had become no more than a

(1) A provincial commissioner in office in 1911 stigmatised the company as leading a parasitical life (F. Aragão e Mello, op.cit.,p.423).
(2) Which the company held until 1924 .
(3) Report by the governor of the Tete district, 1911-12 (Relatórios e Informações, annexe to the Boletim Oficial of Mozambique, 1913, p.13.)
(4) Neither did the missionaries of Boroma and Miruru (also sub-lessees of the Companhia da Zambézia) keep more than groves for their own enjoyment.
(5) This company was also a lessee of the Companhia de Moçambique (see ante, p.163).
(6) Where most Ngoni of Portuguese East Africa live,(see below Part V, Chapter XII).
(7) Only one sub-lessee, Rafael Bivar, had plantations worth mentioning.
(8) Report by the governor of Tete, 1911-12, loc.cit.,p.7.

supplier of labour to neighbouring territories[1]. Some years later, in 1926, in the whole area of the Tete province no more than a handful of plantations were to be found ; and practically no other obligation had been fulfilled by prazo-holders.[2]

Some commentators, in an effort to do justice both to companies and prazo-holders, pointed out that the law set out so many obligations that they could not possibly be fulfilled. Prazo-holders were expected to open and maintain roads and paths, recruit sepoys, inform authorities of the crimes committed in their lands, administer justice in civil cases, register births and deaths, supervise markets, study the customs of Africans, found schools, inform the authorities on any usurpations of land, forest products and minerals, and provide material and moral assistance to Africans. These obligations were in addition to the main duty of prazo-holders which was to promote the development of agriculture: for each ten Africans living in a prazo, the prazo-holder was required to apply for one hectare of land which he undertook to cultivate; as the population of the prazo increased, he was required to apply for further areas. The law also provided that if five years after the contract between the lessee and the government had been entered into at least one-third of the land leased and capable of being cultivated was not in fact cultivated, or if after 25 years the whole of the leased land was not cultivated the government could rescind the contract[3]. Prazo-holders were also under the obligation to experiment with exotic plants and distribute seeds to Africans.

(1) The recruiting company was then the Witwatersrand Native Labour Association which is still at the present time very active in the colony.
(2) A.A. Silva Monteiro, op.cit., p.87.
(3) Report by the governor of the Tete district, loc.cit..

In recent years the position has changed radically. The fact that the Companhia da Zambézia was not responsible for the administration of the territory, together with the fact that the concession included some of the best lands in the colony and comprised two important ports (Quelimane and Chinde) made the operations of the company more profitable than those of the Companhia de Moçambique. The company now employs over four thousand workers a day and owns vast plantations of palm-trees, sisal, cotton, tea, as well as deposits of salt; it possesses a fleet of boats for transport of goods in the rivers and three trade factories; it has built a wide network of roads, houses for employees and hospitals; it is the representative of a number of Portuguese and foreign firms engaging in import and export trade. The Zambezi area, the area of the companies par excellence, now has some of the loveliest and largest palm-tree plantations in the world and contributes to a considerable extent to the external trade of the colony, which relies heavily on its agricultural products to pay its way.(1)

Africans have only marginally benefitted from the increased productivity of the colony. One of its richest products, tea, is not cultivated by independent African farmers. Cotton was until 1961 a compulsory crop for Africans but prices paid were so low (6d per kilogram) that the system had to be abolished if international criticism was to be avoided. Africans have however been better off in coastal areas where palm-tree plantations are possible. Of the 10 million palm-trees in production in Mozambique, 4 million now belong to the large companies(2) and 5 million to about

(1) 99.5% of the total number of products exported from Mozambique are of agricultural origin. (M.P.Pereira dos Santos 'Tendências actuais da economia de Moçambique', Boletim da Sociedade de Estudos de Moçambique, XXIII, No.78, 1953.)

(2) The main companies in the area, of Portuguese and foreign capital, are: the Companhia do Boror (at one time sub-lessee of the Companhia da Zambézia), the Companhia da Zambézia, the Sociedade Agrícola do Madal and the Companhia Colonial de Angoche.

300,000 Africans in the Zambezi area.[1] Not only have the companies given away to Africans substantial numbers of palm-trees[2] but they have set up an export trade (supplying international markets) to which Africans would otherwise have had no access and whose advantages they share.

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(1) The Companhia do Boror claims to have given away all palm-trees of the Macuse area (1 million), belonging to about 15,000 Africans (José Cardoso, 'Companhia do Boror', Documentário Moçambique, No.34, 1943).
(2) M.P. Pereira dos Santos, op.cit.

CHAPTER XI

STATUTORY LAND LAW

In previous chapters *prazos* and, to a lesser extent, companies were discussed. They were looked at globally, as institutions, both because not enough is known of the details of the system and because it was thought necessary that an overall evaluation of their effects on African traditional life should be provided.

This study has now reached the stage when neither of these conditions prevail. It is dealing with contemporary or almost contemporary legislation which is available and can therefore be discussed in a way which was impossible in previous chapters. Secondly, since the impact of Portuguese rule is no longer a matter for conjecture (to be disposed of summarily) but can be observed *in loco*, there is some justification for treating it separately and in detail (see below Part V). The present chapter is therefore strictly legal: a description of the laws which, since the middle of the 19th century, attempted to regulate rights over land in Mozambique[1], and some critical comments on such laws.

The first decree providing for concessions of land in overseas territories was passed on August 21st, 1856. All Portuguese subjects -

(1) The present discussion will deal mainly with lands outside *prazos*, since the latter have already been looked into. Although *prazos* were by far the most important form of European land tenure until the end of the last century, there were other forms of occupation (principally along the Zambezi river).

and Africans had equal rights to Europeans during the liberal period[1] - could acquire vacant lands by either purchase or emphyteusis.[2] Such lands should be cultivated within 5 years, failing which the grant was cancelled; by paying 14 times the rent[3] the lessee acquired the right of freehold over the land.

What is interesting about this decree - and indeed about all subsequent legislation[4] - is that the agricultural contract of enfiteuse should be so engrained in the Portuguese legal tradition that it was resorted to as an alternative to the prazos, to which it resembled so closely. It is recalled that prazos were no more than contracts of enfiteuse to which had been added one or two special features[5], as well as powers in public law[6].

By the end of the 19th century liberalism was dwindling in Portugal. António Enes, the royal commissioner for Mozambique and one of the most influential personalities of his day in the field of colonial affairs,

(1) See ante, p.107. Complete legal assimilation, as was then practised, did not mean that Africans had to renounce their traditional rights and duties; it merely meant that Africans could, if they chose to do so, take part in European institutions. Africans were never denied the right to be ruled by their customary law, neither did liberal legislation interfere with native institutions (N.S. Coissoró, O regime das terras em Moçambique, Lisb., 1965, p.53.)
(2) The term aforamento, synonymous to enfiteuse, is more commonly used in Portuguese legislation.
(3) The Civil Code requires the payment of 20 times the rent (article 1654 paragraph 1.)
(4) I am leaving aside the details of the various decrees and concentrating on their essential features.
(5) As to, for example, the sex and race of the grantee (see ante p.80).
(6) For example the right to collect tribute and to administer justice, and the monopoly of trade (see ante, pp. 82, 83).

made it clear that in his view the prevailing policy of assimilation amounted to madness; Mousinho de Albuquerque, one of his most articulate followers, considered the liberal period 'disgraceful above any other' and responsible for the anarchy prevailing in the administration.(1) Not surprisingly, the decree of May 2nd, 1891,(2) reflecting these views, made separate provision for land held by Europeans and land held by Africans.

The decree applied to those lands, belonging to the Portuguese state, which were not Crown prazos(3) and divided them into three categories: land for villages and towns, land for agricultural and industrial purposes and uncultivated land inhabited by native villages. In all cases land was to be granted by aforamento(4) which could eventually be turned into full ownership in the terms of the Civil Code, 1867(5). No provision was made for sale of land and this omission was later considered one of the flaws of the decree(6). As to the land of the third

(1) Moçambique, 1896-98, Lisb.,1899 pp.206-7.
(2) Decrees passed on 4th December 1861 and 10th October 1865 introduced only slight alterations on the decree of 21st August, 1856.
(3) As to prazos, the law applicable at the time was the decree of November 18th, 1890, which provided that in prazos of the second category (those under Portuguese occupation (see ante, p.149)) prazo-holders were under the obligation to 'respect' African gardens and to recognise the Africans' right to settle in the prazo without previous permission; such right amounted to no more than a right of occupation and would not evolve into full ownership.
(4) After a certain period of time had elapsed and some utilisation of the land had taken place.
(5) By paying 20 times the amount of rent (see ante, p.58).
(6) The decree also required the performance of too many formalities and the participation of too many authorities. In 1893 A. Enes said that the expenses of measurement alone amounted in one instance to 109 years of rent (see his report Moçambique, Lisb.,1893,p.23). For many years red tape remained an evil of the system: as many as 14,868 documents were involved in 413 concessions made in 1909 in Mozambique; some applicants were known to have waited for years for a decision (Rui Ulrich, Economia colonial, Coimbra, 1910, pp.391 and 458).

class (on which there was African occupation) the mode of concession was again the aforamento but provisions were added to the effect that the concessionaire was entitled to state whether he wished huts belonging to Africans to be removed to a strip of land included in the concession or whether he wished them to remain in their present place; if huts were to be removed the area of one hectare per hut was to be reserved and compensation was to be paid as determined by the district governor.(1)

By the end of the 19th century the pattern of land rights in Mozambique was intricate. There were individual rights acquired by occupation as well as by purchase or gift from the chiefs; there were prazos of two categories; there were concessions of land made by the government; there were lands granted to the chartered companies; territories under jurisdiction of African chiefs; lands occupied by Africans; and lands belonging to the public domain of the state.(2)

The Law (Carta de Lei) of May 9th, 1901, represented the first attempt at systematising the whole land tenure in the colonies. In its article 1 it stated that all land which at the time did not constitute private property, acquired according to Portuguese law in force, belonged

(1) The position of Africans was at the time most ambiguous. Neither the decree of 1890 (applicable to prazos) nor the decree of 1891 (applicable outside prazos) permitted acquisition of full ownership by prescription - yet on the other hand this was allowed by article 517 of the Civil Code which applied to Africans as well as to Europeans.
(2) The position was also different in the prazos of the first category and in those of the second category: the 'feudal', non-pacified prazos (see ante p. 149) were considered mere territorial circumscriptions (based on native political units) attached to Portuguese sovereignty through the payment of a poll-tax. The remaining prazos were proper agricultural estates, concessions (from a legal point of view) in which the right of ownership was split between state and grantee.

to the dominion of the state. Secondly, it stated that any acts by or contracts with chiefs and other Africans, entered into without the permission or the ratification of Portuguese administrative authorities were null and void.(1) The law then proceeded to divide lands into seven categories and to set out the purpose for which they were destined.

No concession was to be made to any individual or society unless it was proved that at least half the land already granted had been used or cultivated; special rules were applicable to foreign concessionaires. The law divided Mozambique (2) into two zones: in one, comprising the districts of Lourenço Marques and Gaza, there would be aforamentos only; in the remaining districts the concessions could either take the form of aforamentos or that of Crown prazos.(3) The aforamentos would be governed by the provisions of the Civil Code, 1869.

The law of 1901, on which many criticisms have been levelled,(4) had the merit of devoting a whole chapter to the right of ownership of Africans. Ownership was recognised after 20 years of cultivation or continued residence on the land. Alienation between Africans could take place freely but alienation in favour of non-Africans had to be confirmed by administrative authorities.(5) Africans were also entitled to acquire

(1) Article 4. Contracts made with African chiefs had in the past often been recognised by Portuguese authorities. The position was confusing because on the one hand grants made by chiefs had sometimes been recognised as valid by the Portuguese authorities while on the other hand the government considered itself entitled to give away lands (of whatever area) without consulting the chiefs concerned (A. Enes, op.cit.,p.155).
(2) The law applied to all overseas territories.
(3) In which case they were subject to the decree of November 18th, 1890.
(4) Its faults have been listed as: providing for excessive intervention on the part of the government, requiring too many formalities in granting concessions, placing obstacles to the participation of foreign capital. In addition, the law made for uniformity between the various colonies and this was not always desirable. (N.S. Coissoró, op.cit., p.41).
(5) A similar protection of Africans was commonly afforded in British African territories.

land according to the general laws in force (the Law of 1901 and the Civil Code): by purchase, leasehold (arrendamento) and aforamento[1].

These provisions were not applicable to the prazos, where prazo-holders were simply under the obligation 'to respect lands cultivated by Africans and to provide (Africans) gratuitously with water, firewood and huts'[2].

The decree of July 9th 1909, following on the footsteps of the previous law, provided that after 20 years Africans could acquire full ownership of the land they had been occupying[3]. Occupation should be registered and a title issued to the occupier[4]. Titled possession could be transmitted by death, according to the rules of customary succession[5].

The main merit of the decree of 1909 was to regulate in detail aforamentos, leaseholds and the sale of land and to organise systematically and free of charge all acts and titles concerning property[6]. The attempt was also made at improving supervision over utilisation of land and avoiding the constitution of large latifundia[7]. The law of immovable property

(1) Article 8 of the law of 1901.
(2) Article 200 g) and h).
(3) African landowners were exempted from military service and compulsory work (Article 26 of the decree).
(4) This provision, classfied as utopian by more than one writer, was never in fact enforced.
(5) Alienation inter vivos was forbidden before the period of 20 years had elapsed (Article 17).
(6) The decree adopted the Torrens system, with only very slight alterations. The lack of any registry of immovable property greatly inconvenienced would-be farmers. In 1906 a Belgian newspaper warned fellow-Belgians of the problems facing anyone willing to settle in the area of the Companhia de Moçambique or in fact anywhere in Portuguese territories (Commandant Smits, 'La Compagnie à charte de Mozambique - la situation des colons dans le territoire de Manica et Sofala', Le Mouvement Géographique, Brussels, 1906, 23rd year, Nos. 39-41).
(7) Large estates - belonging mostly to religious orders and noble families - were very much a feature of Portuguese colonies as indeed of the metropolis as well. In Brazil, for example, the whole capitania of Paraíba do Sul was divided into only four estates (Rui Ulrich, op.cit., p. 369.)

applicable to Africans, on the other hand, was not set out in sufficient detail.(1)

For some time influential politicians had been expressing the view that to grant Africans full rights of citizenship (as the liberal regime had done) amounted to political naivety(2). By 1914 the new ideology found its expression in legislation. Article 16 of Law 277(3), of August 15th, 1914, stated that the governor of the colony was ex-officio the protector of the natives in the colony, it being the governor's duty to secure their submission and integration into the general life of the colony and to define their civil, political and criminal status. Article 17 added that laws specially enacted for Africans were applicable to the latter alone and that other individuals enjoyed 'the full use of all civic and political rights granted by the general laws in force'. Finally, article 18 provided that civil relations between Africans were to be governed by their customs and that, as a rule, Africans were to be denied all political rights in European political institutions.

The new ideology was again reflected in a law passed on March 16th 1918, on land concessions. For the first time in Portuguese legal history native reserves were created for the exclusive use of the native peoples(4); plots were to be 'occupied and enjoyed jointly' and no right of ownership could be acquired in them; African customary law applied(5).

(1) Rui Ulrich, op.cit., p.459.
(2) A. Enes, op.cit., pp.62, 218; Mousinho de Albuquerque, op.cit., p.122.
(3) Known as the Lei Orgânica da Administratação Civil das Províncias Ultramarinas.
(4) For the distribution of reserves throughout the colony in the 1940's, see map on p.180.
(5) The decree of 1909, on the contrary, permitted the conversion of occupation into full ownership. The provisions of the two decrees did not otherwise substantially differ.

It may be added that, although the system did suggest apartheid, the suggestion lost some point through the fact that Africans could also settle outside the reserves, on any vacant land.(1) Article 156 of the decree 3.983, 1918, left no room for doubt: "It is permissible to all natives to occupy uncultivated and vacant lands over which no right of ownership (....) exists".

Paragraph 1 - It is understood that the lands referred to are those situated outside the areas reserved for natives(...)".(2)

Article 158 further provided that titles could be issued with regard to such rights of usage not amounting to ownership.

For a long time reserves were demarcated following a decree by the Governor. The ministerial decree n. 33.727, 1933, in its article 8 made provisions as to the manner of demarcating reserves:

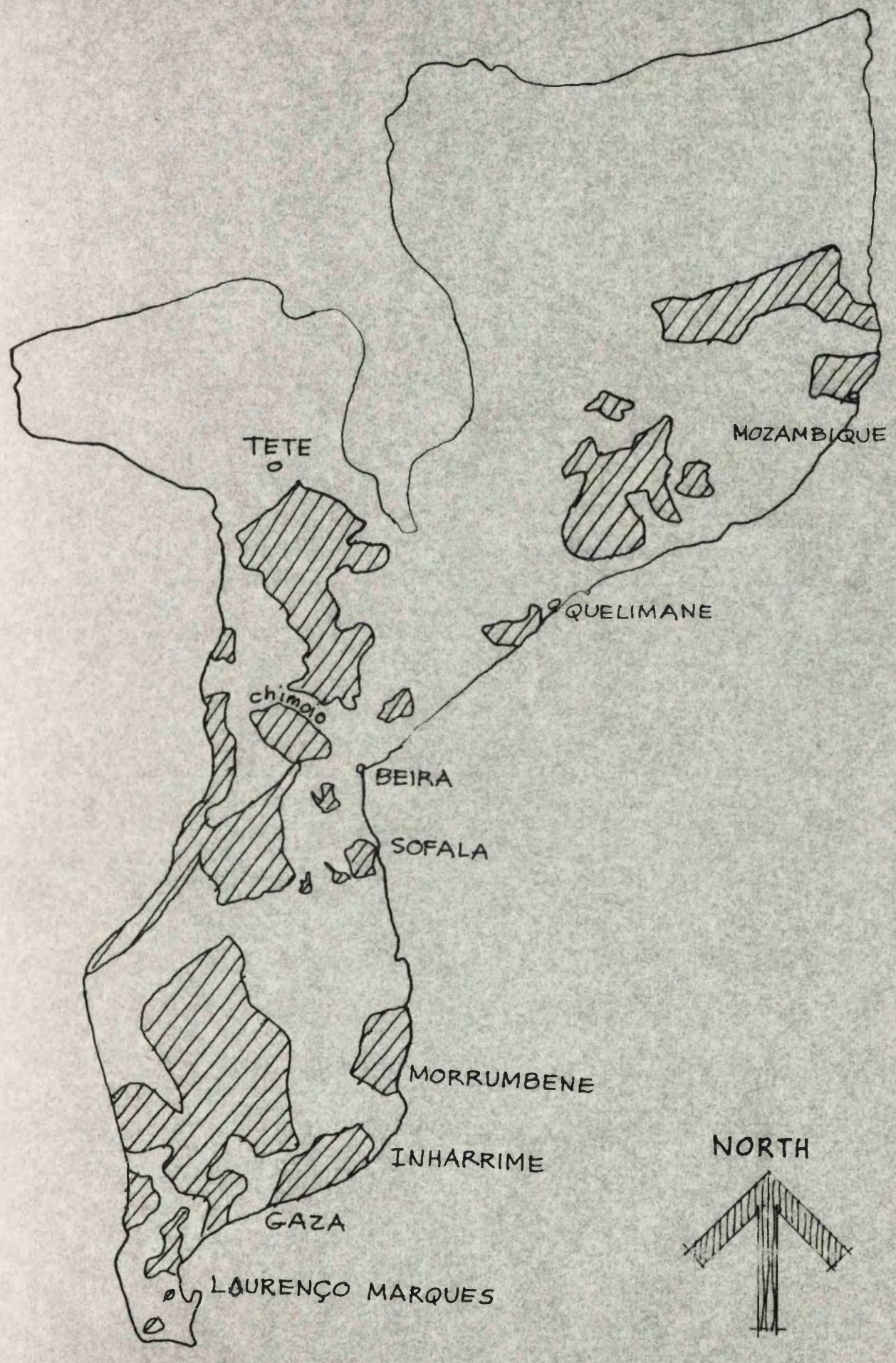
> "The area to be deducted from a prospective concession for African occupation shall be estimated taking into account the number of heads of households. To each of them shall be granted, depending on the nature of the plot: For native crops - 3 to 4 hectares; for cattle grazing (per head) - 4 to 5 hectares; in coconut areas - 30 trees".(3)

(1) It is not clear from the legislation then in force what rights they were to acquire on such lands; it appears to have been no more than some sort of 'protected occupation'.

(2) 'Artº 156º - A todo o indígena é permitido ocupar terrenos incultos e devolutos onde não recaiam direitos exclusivos de propriedade oficialmente demarcada nos termos do presente diploma, do regime de concessões aprovado por decreto de 9 de Julho de 1909, ou de outras leis ou regulamentos anteriores.

único - Entende-se que tais terrenos são os existentes fora das áreas reservadas para indígenas, das povoações danificadas e das mencionadas no capitulo II'.

(3) 'Artº 48º - O cômputo da área a deduzir como ocupada por indígenas no interior de um terreno ocupado pedido em concessão será feito tomando como base o número de chefes de família existentes, atribuindo a cada um, conforme a natureza do terreno: Para culturas cafreais - 3 a 4 hectares, para pascigo de gado (por cabeça) - 4 a 5 hectares. Em terrenos de palmares- 30 palmeiras.'


TETE
MOZAMBIQUE
QUELIMANE
chimoio
BEIRA
SOFALA
MORRUMBENE
INHARRIME
GAZA
LOURENÇO MARQUES
NORTH

This decree was suspended shortly after having come into force, and once more administrative regulations determined from time to time the acreage of land to be reserved to Africans already occupying it.

Portuguese reserves thus had two special features about them: the fact that Africans were not compelled to live in them and were as free as they had ever been to occupy vacant lands and have their rights of usage protected; and the fact that reserves were created whenever in an area where large numbers of Africans were residing and cultivating land a concession was applied for.(1) The system, it is submitted, was protectionist or paternalistic, rather than plainly discriminatory.

Apart from native reserves, the decree of 1918 provided for three means of transferring vacant lands: aforamento, leasehold (arrendamento) and sale.

Between 1918 and 1944 many laws were enacted concerning grants of land in colonial territories but they did not substantially alter the status quo described. What remains to be analysed is the body of personal laws, known as the Estatuto dos Indígenas, which was applicable to Africans (with slight modifications) between 1929 and 1961. The latter date provides a new turning point in Portuguese colonial policy and the consequences of this shift in policy will be discussed at a later stage.

It is convenient to look now into the nature and aims of the Estatuto dos Indígenas and then proceed to a discussion of its provisions on land law.

(1) Africans were asked whether they wanted to remain in their land or whether they would accept compensation and move elsewhere. If Africans chose to stay, the area occupied and a certain amount more was excluded from the concession. Alternatively, a concession might not be granted at all because there was a large population settled in the area (in the files of the Land Department in Mozambique I found several instances of this refusal to grant concessions). All this does not amount to saying that the reserve system always worked well. Many cases were known of lessees making life so difficult for Africans that the latter preferred to leave, often without receiving any compensation.

The Estatutos were addressed to the section of population known as indígenas,[1] a term which was defined according to a criterion both ethnical and cultural. Article 2 of the Estatuto of 1929[2] reads:

"For the purposes of the present enactment, it is considered that indígenas are those persons of the negro race or their descendants, who, by their education and customs, are indistinguishable from the majority of members of ~~such~~ that race; non-indígenas are individuals of any race who are not in the conditions of the above mentioned".[3]

The definition of indígena in the 1954 Estatuto was narrower because a person had, in addition, to 'have been born or live habitually' in the Colony; the child of a native father and mother, born out of the Colony in a place where his parents were living temporarily, was also considered an indígena.[4]

The legal consequences of being an indígena were those of article 3 of the 1954 Estatuto:

'Except when otherwise provided for by law, indígenas are ruled by the usages and customs of their own societies'.[5]

(1) Natives of São Tomé, Cape Verde islands, India, Macau and Timor, were held to be culturally assimilated to the Portuguese people and did not have the status of indígenas. Only in Angola, Mozambique and Guinea was the system of indigenato in force.
(2) A similar provision existed in the 1929 Estatuto, article 8.
(3) Article 2 - 'Para os efeitos do presente Estatuto, são considerados indígenas os indivíduos de raça negra ou dela descendentes que, pela sua ilustração e costumes, se não distingam do comum daquela raça; e não-indígenas, os indivíduos de qualquer raça que não estejam naquelas condições.
(4) There was no consensus as to what the term indígena in fact implied in public law: some authors considered that indígenas were Portuguese 'subjects' but not Portuguese citizens (Marcelo Caetano), others that they were 'nationals' but not citizens (Adriano Moreira) (N.S. Coissoró, O regime das terras em Moçambique), Lisbon, 1965, p.63).
(5) Article 3º - Salvo quando a lei dispuser doutra maneira, os indígenas regem-se pelos usos e costumes próprios das respectivas sociedades'.

More interesting than the body of the article was its paragraph 3:

'The extent to which native usages and customs shall be applied will vary according to the degree of evolution, the moral qualities, the professional aptitude of the native and his departure from or integration into tribal society'.(1)

This article had particularly in mind detribalised Africans. For them a system of direct rule was envisaged in article 21 of the 1954 Estatuto:

'Administrative authorities will, by themselves alone, exercise powers of jurisdiction and of police over those natives who have ceased to be integrated in traditional political organisations'.(2)

Since it was the declared policy of the Portuguese Government to retain African political institutions only for a limited period(3) and personal laws only in so far as Africans had not become culturally assimilated to Europeans (Article 3, paragraph 3, of the 1954 statute), it is not irrelevant to ask what means were open to Africans to acquire citizenship and become assimilados. They were, in the first place, those indicated in Article 56 (1954 Estatuto):

'The status of indígena can be forsaken and citizenship acquired if a man proves that he fulfils cumulatively the following conditions:

(1) Article 3 paragraph 3 - 'A medida de aplicação dos usos e costumes indígenas será regulada tendo em conta o grau de evolução, as qualidades morais, a aptidão profissional do indígena e o afastamento ou integração deste na sociedade tribal'.
(2) Article 21 - 'As autoridades administrativas exercerão por si sós jurisdição e polícia sobre os indígenas que deixarem de estar integrados nas organizações políticas tradicionais'.
Article 22 provided that, where there were a number of detribalised natives, administrative authorities could appoint, from among the inhabitants, administrative regedores and cabos de ordens who should be given powers of police and be considered auxiliaries to the administration.
(3) This can be inferred from the Constitution itself, articles 138 and 141.

a) To be over 18 years of age;

b) To speak correctly the Portuguese language;

c) To practise a profession or trade from which he derives enough income to keep himself and his family in his charge, or to possess enough means for the same purpose;

d) To be well-behaved[1] and to have acquired the education and habits assumed for the integral application of the public and private law[2] of Portuguese citizens;

e) Not to have deserted or evaded military service'.[3]

Article 57 made provision for the acquisition of citizenship by married women whose husbands had become citizens: such a wife, and legitimate children who were living with the man at the time of his change in status, could also acquire Portuguese citizenship if they fulfilled conditions b) and d).[4]

(1) Sic: 'bem comportado'.

(2) This basic division of Portuguese law into private and public has no equivalent in English law. Private law is that which rules personal relations (family, succession, contract) and the law of property, whereas public law comprises criminal law and constitutional law.

(3) 'Artº 56º - Pode perder a condição de indígena e adquirir a cidadania o indivíduo que prove satisfazer cumulativamente aos requisitos seguintes:

a) Ter mais de 18 anos;
b) Falar correctamente a língua portuguesa;
c) Exercer profissão, arte ou ofício de que aufira rendimento necessário para o sustento próprio a das pessoas de família a seu cargo, ou possuir bens suficientes para o mesmo fim;
d) Ter bom comportamento e ter adquirido a ilustração e os hábitos pressupostos para a integral aplicação do direito público e privado dos cidadãos portugueses;
e) Não ter sido notado como refractário ao serviço militar nem dado como desertor'.

(4) The procedure adopted was for a man who felt he satisfied the standards set up in article 56 to write a petition to the Provincial Commissioner applying for the status of assimilado. Such petition was handed over to the district officer, who would give his opinion on the matter. If the decision by the P.C. was a favourable one, permission was given to the administrative authority to issue an identity card (cartão de identidade), which constitutes full proof of citizenship; if the decision was unfavourable the applicant could appeal to the High Court within 15 days (article 59).

Besides the category of people referred to in art.56, there was another group of natives who could acquire citizenship, and for them the procedure was much more simple. Art.60 of the 1954 Estatuto read:

> "An identity card will be issued without any of the formalities mentioned in the present statute if the applicant produces good proof of any of the following facts:
>
> a) To be or to have been a civil servant either by appointment or under contract;
>
> b) To be or to have been a member of a municipal body;
>
> c) To have passed the Juniors' Certificate or its equivalent;
>
> d) To be a registered tradesman, a partner in a commercial company except...., or to own a legally recognised industrial concern".(1)

Critics of the Portuguese regime often commented on the fact that acquired citizenship could be revoked. In fact, art. 64 of the 1954 Estatuto provided:

> "Citizenship granted or recognised according to articles 56 and 60 can be revoked by a decision of the judge of the comarca(2) in question, on the recommendation of the administrative authority of the area and with the participation of the Ministério Público.(3)

(1) Artº 60º - O bilhete de identidade será passado sem dependência das formalidades previstas neste diploma a quem apresente documento comprovativo dalguma das seguintes circunstâncias:

a) Exercer ou ter exercido cargo público, por nomeação ou contrato;
b) Fazer ou ter feito parte de corpos administrativos;
c) Possuir o primeiro ciclo dos liceus ou habilitação literária equivalente;
d) Ser comerciante matriculado, sócio de sociedade comercial, exceptuadas as anónimas e em comandita por acções, ou proprietário de estabelecimento industrial que funcione legalmente'.

(2) A legal division of the territory.

(3) Artº 64º - A cidadania concedida ou reconhecida nos termos dos arts. 56º e 60º poderá ser revogada por decisão do juiz de direito da respectiva comarca, mediante justificação promovida pela competente autoridade administrativa, com intervenção do Ministério Público'. (In Portuguese Africa the Ministério Público is the legal defender of natives).

The law did not specify the conditions on which such revocation depended and this was the more regrettable because one of the grounds for revocation was that the Africans had ceased to be 'well behaved' (Art. 56 d) - good behaviour in this context necessarily meaning mostly, if not exclusively, conformity to administrative rule and political passivity. Art.64 paragraph 2 added that once citizenship was revoked the identity card would be confiscated and the person in question would become an indígena once more.

The last main point in the Estatutos to which attention should be called is that, besides complete assimilation, acceptance of Portuguese law in toto, Africans also had the choice of opting for the partial application of Portuguese law.(1) Art.27 of the Estatuto dos Indígenas, 1954, is the relevant provision:

> "It is permissible to natives to opt for Portuguese law in such matters as family relations, succession, commerce and immovable property".(2)

According to the paragraph to the main part of the article, the indígena in question could, if he wished, specify which of the branches of Portuguese law he wanted to be made applicable to him; the judge to

(1) The Estatuto of 1929 did not provide for the option by Africans of Portuguese law while remaining indígenas. The decree No.35 461, 1946, enabled Africans (without loss of their status as indígenas) to be exempted of the application of their traditional law in the field of family law and succession, if they would allege and prove that they practised a religion which was incompatible with the customs of such people or tribe. The rule in the 1954 Estatuto is broader as to the object of the exemption (it includes trade and immovable property) and does not depend on religious incompatibility being alleged and proved.

(2) 'Art° 27° - É permitido aos indigenas optar pela lei comum em matéria de relações de família, sucessões, comércio e propriedade imobiliária.

único - A opção pode ser requerida pelo interessado ou aceite pelo juiz com limitação a alguma das espécies de relações indicadas no corpo do artigo'.

whom the application was made, had an identical power.

Obviously, an African could not, while remaining an indígena, choose to have the Portuguese 'Direito Público' applied to him - in which case he would have the same political rights as a citizen, a situation which, as we have seen, various Estatutos specifically forbade. His enjoyment of public rights according to Portuguese law could only be acquired through the acquisition of citizenship, following the rules of Articles 56 and 60. Art. 21 refers to branches of 'private' law only.

On the subject of immovable property, the Estatuto dos Indígenas, 1954, declared in its article 37:

"The State recognises and favours individual rights of natives over rural and urban property (...)".(1)

Following this policy of encouragement of individual rights, Africans were entitled to hold them in all circumstances. Within the reserves, rights held were normally rights of usage and the law applicable was customary law. But even there, lands hitherto 'enjoyed in common' could become individually owned on the application to the governor by the recognised chief (regedor) of the area, being granted, provided the application was made on behalf of an African residing in the area (art.38 paragraphs 1 and 2).

Outside the reserves, the law envisaged two different situations, according to whether or not the African had opted for Portuguese law.(2)

(1) Article 37 - 'O Estado reconhece e favorece direitos individuais de indígenas sobre predios rústicos e urbanos ....'.
(2) Option for Portuguese law, it will be remembered, could either be total or merely refer to some branches of the law.

If he so opted, he became subject to the provisions of Portuguese general law, namely he could acquire full ownership by various means, although it is not entirely clear which means were open to him[1].

If, on the other hand, an African occupied vacant land outside the reserves and did not opt for Portuguese law, he still acquired individual rights of ownership according to Portuguese law but was subject to some restrictions: a) Right of ownership was recognised to him only if the land had the minimum area of one hectare; b) Acquisition had to follow the rules of article 39 of the Estatuto[2]; c) Africans were bound by conditions as to improvement of land[3]; d) transfer of land owned by

(1) The second part of article 37 read: 'Natives who have opted for Portuguese law in the field of immovable property can acquire the right of ownership or other real rights over immovables by inheritance, legacy, donation or purchase' ('Os indígenas que tenham optado pela lei comum em matéria de propriedade imobiliária podem adquirir o direito de propriedade ou outros direitos reais sobre bens imóveis por herança, legado , doação ou compra').

It is arguable whether this enumeration is meant to be exhaustive or whether it merely provides examples of means of acquisition. The answer to this question is not irrelevant because if the former is the correct interpretation, means of acquisition not mentioned (such as acquisitive prescription) would not be recognised by law.

(2) Acquisition had to be: 1) by concession of the government; 2) by concession or sub-concession by a lessee legally entitled to dispose of his land; 3) by possession for 10 years of vacant land. A main form of acquisition - purchase - was thus not available to Africans not opting for Portuguese law.

(3) Articles 41 and 42. Article 41 reads: 'the native owner is bound to keep his rural property permanently clean, to harvest crops and to gradually transform his primitive cultivation into systematic cultivation, in which case he will be exempted from any public duties which cause him to be away from his fields for more than three months except for military service or as a result of a judicial sentence' ('O proprietário indígena é obrigado a manter o prédio rústico permanentemente limpo, a colher os frutos produzidos e a transformar progressivamente a cultura por formas primitivas em cultura ordenada, ficando neste caso dispensado de obrigações públicas que envolvam afastamento das suas terras por mais de tres meses, salvo as resultantes do serviço militar ou de sentença judicial').

Article 42 provided: 'within a period to be determined by law, the right of ownership granted can be revoked if the grantee does not use his land, abandons it or does not cultivate it without good cause, or if he is justly expelled from his society....'('A propriedade concedida é resolúvel durante o período que a lei fixar desde que o concessionário não aproveite a terra, a abandone, a deixe de cultivar, sem motivo de força maior, ou seja expulso justificadamente do agregado social em razão do qual houvesse recebido a concessão').

Africans to non-Africans was strictly limited; [1] e) Africans' right of ownership could not be mortgaged (art. 42 and 46); f) it could be revoked within a certain period (art.42).

Summarising: under the 1954 Estatuto, rights acquired on vacant lands by Africans who had opted for Portuguese law did not differ from those of other Portuguese citizens except perhaps in their mode of acquisition. Rights acquired by Africans when not opting for Portuguese law presented peculiarities as to the mode of acquisition, were bound by stricter conditions as to improvement, and could be revoked. Such rights of Africans could either amount to freehold (subject to the restrictions mentioned) or to leases subject to payment of rent in the usual terms.

In 1961 Prof. Adriano Moreira, at the time Overseas Minister, thought it fit to answer international criticism by promoting the enactment of a law which abolished the status of indígena. The importance of the change, from a political point of view, has already been discussed (see ante pp. 150 et seq.), and at present I am only concerned with its repercussions

(1) African property could not, for example, be mortgaged except in favour of credit organisations 'created by law for the benefit of natives'. But the produce of such property could be pledged according to the normal rules of Portuguese law.

A second exception to the rule that land owned by Africans could not be transferred to Europeans was that of article 44 paragraph 1 of the 1954 Estatuto: 'Property situated outside areas destined to common usage by tribal natives (i.e. reserves) can be inherited by sucessão legítima by non-natives....'('Os prédios situados fora das áreas destinadas a fruição conjunta dos indígenas organisados em tribos podem ser transmitidos por sucessão legítima a indivíduos não indígenas chamados à herança nos termos da lei comum').

Succession in Portuguese law can either by legitimária (in favour of persons whose position as heirs cannot be displaced by a will), testamentária (testamentary) and legítima (in favour of those persons indicated in the Civil Code to succeed as heirs if the dead person left no will). In other words, an African could not under the Estatuto, 1954, unless he had opted for Portuguese law, make a will in favour of a non-African, but an estate of an African could devolve on a non-African if there was no will and the non- African was a potential heir according to the Civil Code.

in the field of land law.

In effect the decree No.43.894, 1961, presents very few variations from previous enactments. But since it is the law at the present moment, it is useful to summarise its main features.

Excluding for the moment the land belonging to the 'public dominion of the State', (domínio público do Estado.), river beds, land used for airports, railways etc, land in Mozambique is now classified into three categories: land of the 1st class (townships), of the 2nd class (to be used 'communally by the African populations, according to their customs') and of the 3rd class (vacant lands not included either in the 1st or the 2nd categories).(1)

The designation of 'lands of the 2nd class' has taken the place of the former one of 'reserves', a term which is not used in the new law in connection with African occupation. But the process of demarcating such land has not changed. Areas are not chosen into which Africans are subsequently removed; on the contrary, the fact that there are African populations living in a certain area precèdes the declaration of such area as 'land of the 2nd class'. Where the law has changed, and for the better, is in defining more clearly and generously than before the area reserved for African occupation. Formerly this was left to the Administration. The present decree provides that, when demarcating lands of the second class, five times the area in actual occupation has to be reserved (art.88). As before, there is no systematic demarcation of African lands, such demarcation only taking place whenever a concession has been applied for.

The present law differs in another respect from the previous one: the alternative which formerly existed for the concessionaire, of paying compensation if Africans residing on 'his' land were willing to move

(1) Art.41 paragraphs 1, 2 and 3.

elsewhere, has disappeared. The law now forbids any removal of populations (art.89): Africans therefore cannot now be asked, as they could before, whether they want to stay or whether they prefer to leave and receive compensation. They must not be interfered with and must be given an extra area five times the size of that in actual occupation. Art.170 provides that no concession shall be granted before proof is produced that the interests of local populations have been taken into account.

According to the decree, land generally can be acquired from the Government by either of the following means: a) land in townships (plots of the 1st class) - by purchase; b) land of the third class - by aforamento if meant for agricultural purposes (art.50), or by short-term leases (arrendamentos) (Article 51); c) plots of the second class cannot be alienated by the government except in favour of Africans wanting to own them individually.

Plots of the second class are to be enjoyed 'in common and in the customary way', as was the case with former reserves; such occupation does not give rights of individual ownership (article 224 paragraph 1). But, as before,(1) these plots can be occupied individually once permission(2) is obtained;(3) they then become subject to the rules governing African occupation of vacant lands, discussed below.

If an African occupying vacant land opts for Portuguese law, this law will regulate all relations arising from possession of that land. If he does not opt for Portuguese law he can still be granted concessions (subject to restrictions as to revocability and minimum and maximum areas) but cannot acquire full ownership unless and until he opts for Portuguese

(1) See ante, p.187.
(2) To be asked by the African authority of the area.
(3) The law requires the existence of permanent villages and gardens.

law. Full ownership can be acquired according to the decree and the Civil Code by buying the freehold, after the conditions of improvement of an aforamento have been fulfilled; but article 232 of the decree restricts this power by providing that freehold can only be bought after concessionaires have opted for Portuguese law. The restrictions as to size and revocability are: Africans not opting for Portuguese law can only be lessees if their plots are of an area not inferior to 2,5 acres; they cannot be granted areas of more than 50 hectares unless they prove that they have the financial resources and the know-how necessary for the enterprise; an African's titles is only provisional, in that for 10 years it can be revoked for failure to cultivate without good cause[1] or as a result of banishment from the society where the land is situated.

Africans can, on vacant lands (or in 2nd class lands specially granted to them), be given leaseholds of the two existing types: arrendamentos - by concession of the Government only; and aforamentos - by concession from the Government or by agreement with a private individual or by uninterrupted possession of land for 10 years. Aforamentos may lead to freeholds[2] as described.

As before, the power of an African to alienate land to a non-African is restricted, article 241 providing that all contracts made by Africans purporting to transfer their plots are null and void unless the other party to the transaction is also an African. As previously, a European can inherit mortis causa by sucessão legítima, but by no other means, the immovable property which belonged to an African. As before, Africans' land cannot be given as guarantee to a contract, except in the case of bodies created for the protection of African interests. Non-Africans can transfer

(1) European lessees are also bound by provisions designed to ensure that their land is improved, but they appear to be less strict than those applying to Africans.
(2) By paying an amount equivalent to 20 times the annual rent (Civil Code, article 1654).

to Africans their rights as lessees (in which case the right of Africans is restricted in the way mentioned before) or as freeholders, although in the latter case the African would presumably be bound (for the sake of consistency with other provisions in the decree) to opt for Portuguese law.

Non-Africans cannot simply occupy vacant lands[1] in the way Africans can and have to be granted a lease (either an aforamento or an arrendamento). All rights can be registered and a certificate shall be issued on request. This certificate is absolute proof of the right described therein. A real right which is not registered does not produce any effects with regard to third parties (article 246) and is not recognised by the State (article 198).

It will have been noticed that the 1961 decree did not introduce any new feature with regard to African land tenure; in fact it did little more than to provide for tighter conditions as to improvement and for quickness in the procedure of granting concessions. The 1961 decrees were promulgated for political reasons and their novelty is more apparent than real. Certainly in the case of land law there was no justification for repealing existing enactments, since the decree No.43.894, 1961, adds practically nothing which is new. The fact, however, that partial option for Portuguese law is no longer possible under the 1961 enactments has some fortunate results. Formerly an African could choose, for example, to have Portuguese law applied to his relations in the field of immovable property, while remaining bound by customary law in such branches as family law and law of succession. One can imagine the intractable conflicts to which this partial option gave rise in the past.

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(1) Art.255: 'The acquisition of State lands by mere occupation is absolutely forbidden'. Africans who have opted for Portuguese law are also excluded from the permission to acquire rights by mere possession.

PART V

CUSTOMARY LAND LAW

CHAPTER XII

THE NGONI

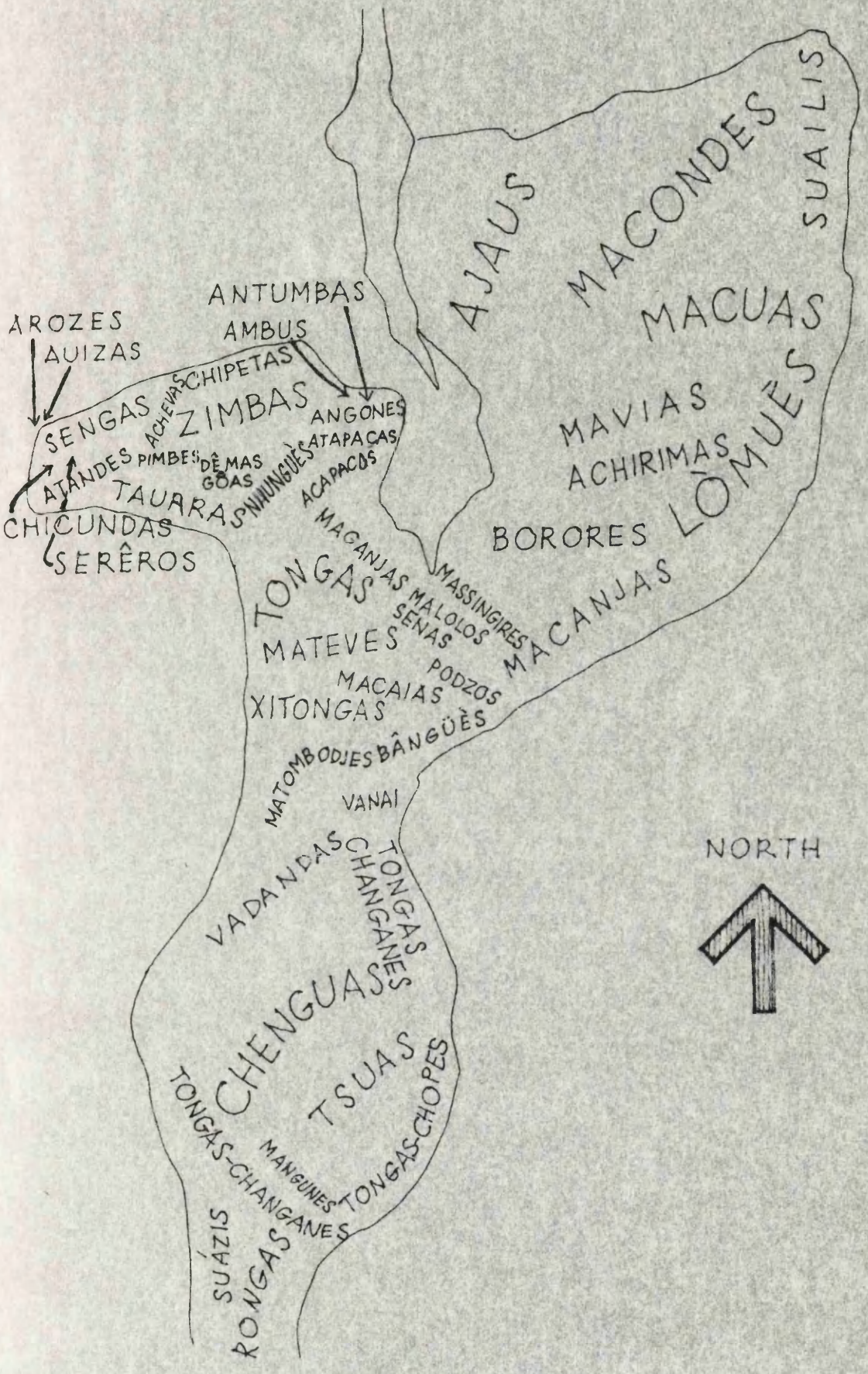
General

The vast majority of the Ngoni living in Portuguese East Africa are settled in the circunscrição of Angónia,[1] a former prazo now part of the Tete province.[2] This province lies North of the Zambezi river and extends as far as Malawi on the East and North, and Zambia and Rhodesia on the North and West. The circunscrição of Angónia has an area of 4,500 square kilometers and is situated in the North-Eastern corner of the Province.[3] Its African inhabitants are the Ntumba (approximately 49,000), the Ngoni (some 13,000) and a variety of other tribes.[4]

Compared to neighbouring areas - in fact almost all the immense Tete district, except for areas bordering the Zambezi river - Angónia is highly populated. Its demographic density ranges from 7 or 8 inhabitants per square kilometer to 83 in the administrative headquarters of Vila Coutinho; the average density of population for the circunscrição was in 1960 estimated to be about 23 inhab./sq.km.[5]

There are many villages scattered almost everywhere and Angónia contrasts vividly with its neighbour, the circunscrição of Macanga, which has an average of only 2.4 inhab./sq.km. There is an abundance of cattle in the circunscrição - about 70,000 head - and there is some apprehension that this may be causing soil erosion. Its redistribution

(1) For a short history of the Ngoni of Angónia and some comments on the Ngoni of Niassa Province, see Appendices D and E.
(2) When the land companies made their appearance, Angónia became part of the prazo of Macanga, administered by Sena Sugar Estates Limited (see ante, p. 168). In 1930 the prazo was extinguished and gave place to the circunscrição of Angónia.
(3) Velez Grilo (Esboço de um guia etnográfico de Moçambique, 1960) adds the following figures for other tribes: Cipeta - 5,000; Matengo - 5,000; Jena - 3,600; Cewa - 1,700.
(4) See maps on pp. 196, 198.
(5) Social-economic survey carried out by the Missão de Fomento e Povoamento do Zambeze, 1960.


AJAUS
MACONDES
SUAILIS
MACUAS
LÒMUÈS
MAVIAS
ACHIRIMAS
BORORES
MACANJAS
ANTUMBAS
AMBUS
AROZES
AUIZAS
CHIPETAS
ACHEVAS
SENGAS
ZIMBAS
ANGONES
ATAPACAS
ACAPACOS
AJANDES
PIMBES
DÊMAS
GÔAS
NHUNGUÈS
TAURAS
CHICUNDAS
SERÊROS
MAGANJAS
MASSINGIRES
MALOLOS
SENAS
TONGAS
MATEVES
PODZOS
MACAIAS
XITONGAS
BÂNGUÈS
MATOMBODJES
VANAI
VADANDAS
CHANGANES
TONGAS
CHENGUASS
TSUAS
TONGAS-CHOPES
MANGUNES
TONGAS-CHANGANES
SUÁZIS
RONGAS
NORTH

into neighbouring areas would have been advisable except for the fact that cattle are said to be all suffering from East Coast fever.(1)

Angónia is for the most part a vast plateau at about 4,500 feet of altitude with some mountains of which the Dómuè deserves special mention for its history as well as for its beauty. There is no tsetse in the area, the climate is excellent and the soil very fertile. There is in many areas a shortage of forests, which causes serious inconvenience to local populations. There is some, but very little, white settlement, most Europeans in the area being shopkeepers and only a handful of farmers, in spite of the excellent natural conditions. Roads are unbelievably bad, even in the neighbourhood of Vila Coutinho. In the rainy season ~~on~~ one can not be sure of making by car (2) the 300 kms linking Vila Coutinho to Tete(3), let alone any other trip. The roads of her neighbour Malawi are the Angónia drivers' paradise. Planes land in Vila Coutinho 'airport' twice a week, if the ground is not too soaked to prevent it. As there are no proper roads, no lorries make regular commercial trips. The region is not served by railways either (4).

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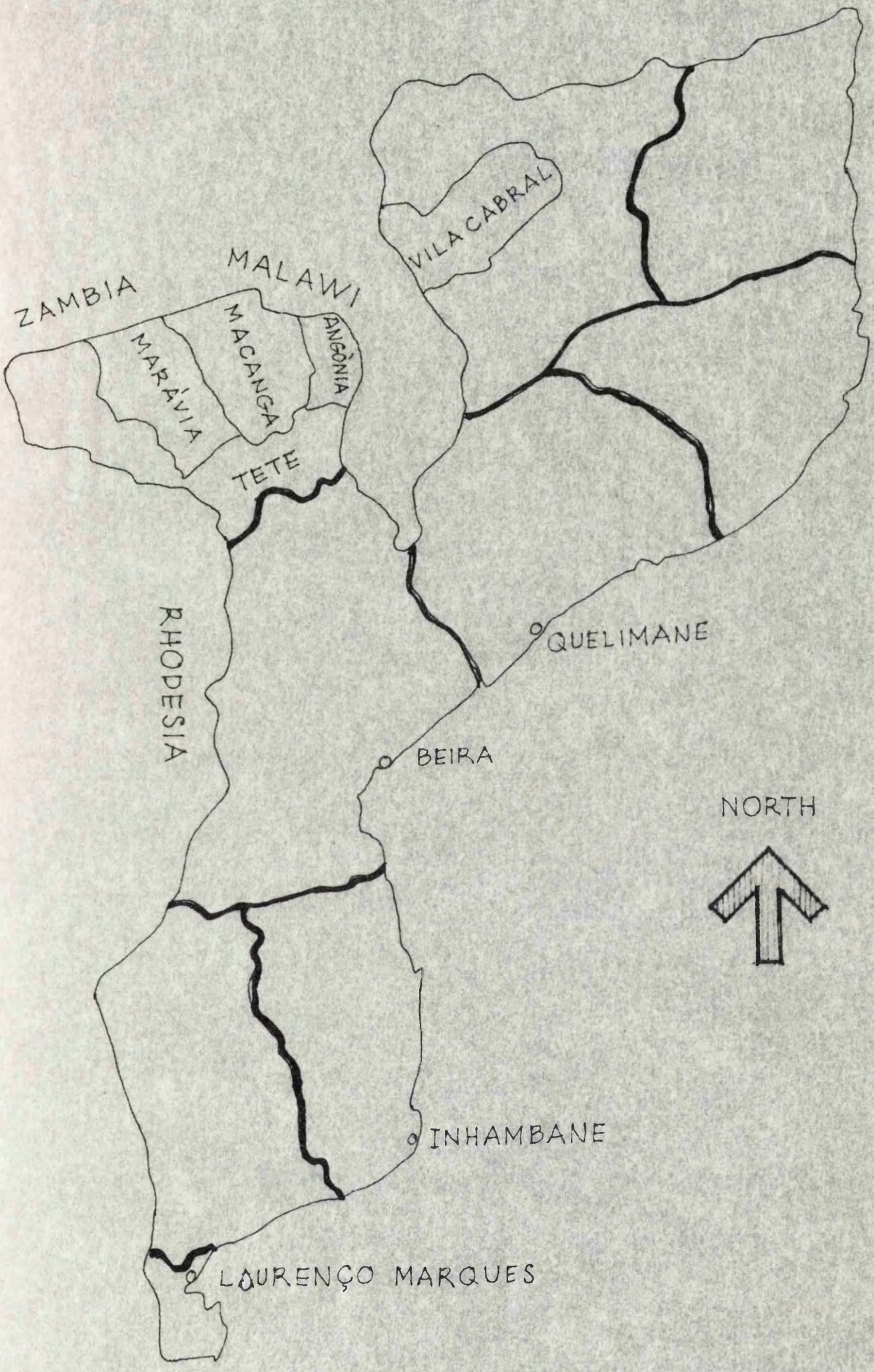
(1)Op.cit.
(2)Land Rovers, of course; nothing short of that will be of any use.
(3)Notice that one is the headquarters of a distrito (a province) the other the headquarters of a circunscrição.
(4)The present district commissioner has promised Africans who have any produce for sale to hire lorries to carry their goods to Beira. It is not clear how they could compete with locally produced crops after paying for a trip of 1,000 kms return. It is in this ad hoc and improvised manner that things are done - when the district commissioner happens to be an enterprising man.


ZAMBIA
MALAWI
VILA CABRAL
MARÁVIA
MACANGA
ANGÒNIA
TETE
RHODESIA
QUELIMANE
BEIRA
NORTH
INHAMBANE
LAURENÇO MARQUES

The People[1]

The Ngoni live in close contact with the Ntumba, a matrilineal people living in an area stretching from Angónia to the Kirk Mountains in Malawi and said by some to differ from the Cewa only in name.[2] Ntumba, Cewa and Cipeta (another name for the Cewa)[3] together constitute the overwhelming majority in the land inhabited by the Ngoni. It is however to be noted that the present young generation invariably appear to call themselves Ngoni, deriving their name from the country where they were born and live.

The Ngoni tradition has been, from the time when they departed from Zululand, a tradition of integrating local populations into their numbers and marrying their women. Inevitably a number of features of the old Zulu social organisation were lost. The Ngoni of Angónia have forgotten their home language and adopted the local Nyanja; not even elderly men now speak Zulu, unless they happen to have worked in South Africa.[4]

(1)Besides the historic account of Father J.B. Gonçalves (A Angónia e os seus angones, unpublished) and one or two articles on physical anthropology of no relevance to this study, nothing has been written on the Ngoni of Mozambique. The sources of the present chapter are my own field work, carried out in the area between August and November 1964; in making my enquiries, however, I kept in mind published material on the Ngoni people of Malawi and Zambia (in particular the works of M.Read and J.A. Barnes).

(2)Neither M. Tew (The peoples of Lake Nyasa region, Lond., 1950) nor M. Read (The Ngoni of Nyasaland, Lond., 1956) identify Cewa with Ntumba.

(3)It is generally accepted that the Cipeta are Cewa living in areas of a certain high grass which bears the same name. But Stigand considers that the fusion of the Cewa and Cipeta only took place at the time of the arrival in Fort Manning of the Mpeseni Ngoni, both local tribes having taken refuge together in the face of a common enemy. By the time peaceful conditions were restored, the Cipeta were so mixed with the Cewa of Mwase Kasungu that they had lost their identity. ('Notes on the tribes on the neighbourhood of Fort Manning, Nyasaland' - J.R.A.I.,39, 1909,p.36).

(4)Emigration from the Portuguese territory to the mines of South Africa and the Rhodesias used to be considerable. It has almost ceased in the last few years.

Ceremonies held to be typically Zulu, such as incwala, a first-fruits ceremony, ceased to take place and the meaning of the word itself was lost. Old dances formerly reserved to the Ngoni can now be danced by anyone who knows how to dance them[1], and this is allegedly the sole criterion for admission. The private initiation ceremonies of the aristocratic Ngoni girls have been replaced by the Cewa cinamwali, which is now practised generally by both Ntumba and Ngoni of all social positions.

The system of 'houses' which was a pillar of Zulu society has in Angónia evolved beyond recognition. The horse-shoe formation, with houses arranged in descending order of importance as they were situated further away from the main hut, is not to be found in Angónia. Instead the pattern of hut-building is loose and informal. Often a man married virilocally does not build all his wives' huts in the same area, as jealousy between them makes this inadvisable. If, on the other hand, relations between wives are good, the husband will build their huts together and will enclose the area with a fence;[2] even if women are thus clustered - few men now have more than two or three wives in any case-their gardens will probably be scattered throughout the village.

Not only has the system lost its external characteristics but it does not serve its previous economic purposes. Ngoni men do not now allocate land or cattle to the various 'houses', to be administered with considerable independence and inherited by their own heirs. A man's

(1) M. Read believed that these dances clearly expressed social distinctions between the true aristocrats and their former slaves, since the latter were excluded from the dances ('Songs of the Ngoni people', in Bantu Studies, 11, 1937).
(2) The big wife's hut should in this case be the first hut on the right as one walks into the enclosure, but this rule is not always enforced and there is no rule as to the place to be occupied by other huts.

property, except for any occasional gifts he may make, remains his own throughout his life. On his death all his sons succeed to his property,[1] although some of the former privileges of the eldest son have not died away.

Yet something remains of the system. The expressions 'big house' (nyumba yaikulu), 'house of the second wife' (nyumba ya mkazi waciwiri), 'house of the third wife' (nyumba ya mkazi wacitatu)[2] are of common usage and 'houses' have political and social, if not economic, relevance. The Nkosi must be the son of the 'big wife' (the first wife) and so must a mfumu and a nyakwawa, although in the latter case the rule might not be enforced. There is a general belief that if a man is ill or dies he ought to be taken to his big wife's hut and no other. If an important visitor comes to see a man, the adequate place to entertain him is his big wife's hut. If a Ngoni man has cattle no other wife should keep it for him. A man who arrives from abroad should leave all the souvenirs he brought for his wives in the hut of the mkazi yaikulu until he distributes them and this will also take place in the same hut. The fact that the big wife has unusual privileges and ought to be shown special consideration is recognised by other wives who address their senior as 'mother' - a term which expresses respect and is not employed reciprocally.[3] Informants say that differences in status exist merely between the first wife and other wives and not between the junior wives themselves.[4]

(1)See below, pp. 212 et seq.
(2)The terms 'house of the right-hand' and 'house of the left hand' used in Natal and that of 'gogo house' from Nyasaland (M. Read, The Ngoni of Nyasaland, passim) are not to be found in Angónia.
(3)An informant on the branch of Ngoni living in the Portuguese district of Niassa (east of Lake Nyasa) told me the following true story: when chief Miandica was converted to Christianity in about 1926 he divorced several of his wives, among whom his big wife. On his deathbed, about 12 years later, he asked to be carried to her hut. My informant, also a Ngoni, commented that a man must die 'with honour, with respect'.
(4)This appears to be contradicted by the fact that junior wives have different titles.

As to the place of residence at marriage it appears that the Ngoni have hardly been influenced by the uxorilocal Ntumba. The Ngoni in this part of the world are invariably virilocal when marrying between themselves, and almost always virilocal, too, if they marry Ntumba women.[1] Ntumba customs on residence at marriage are very variable. Most Ntumba, after a man has resided with his parents-in-law for a year or two, allow him to take his wife away without any payment being made. Some other families do not allow their daughters to leave unless the man has paid cuma; whether or not he is asked to give bride-price depends in many cases on whether or not he is known to own cattle (as bride-price is hardly ever paid in money). Finally, other Ntumba parents refuse to accept bride-price even when it is being offered to them, either because they do not want to lose their daughters, or the rights over her children, or because the amount of bride-price is not attractive enough.

With the Ngoni the place of residence at marriage presents no such variations, whether or not cuma has been paid; a Ngoni man will always take his wife with him in the traditional way, if she does not already belong to the same village. The main effect of non-payment of bride-price concerns rights over the children in the case of divorce.[2]

(1) Some informants hinted that a Ngoni son-in-law is an undesirable element to have at too close quarters due to his arrogance; others that in the case of conflict of customs, the Ngoni are less prepared to give way; while others argued that the Ngoni are usually willing to pay bride-wealth (locally called cuma or malowolo) and some Ntumba welcome this practice and agree to let their daughters be taken away.
(2) It appears that a man can still pay cuma at the time the divorce is taking place but that if he fails to do so the children may be divided between his wife and himself.

Customary land law

a) Modes of acquisition

Land can be acquired in one of two ways: either by opening up a new garden or by having an old plot transferred to oneself.

I shall deal with the former means of acquisition in the first place. Except for a few congested areas, land is not on the whole scarce[1] in Angónia and it is possible for anyone to open a new garden. But rights previously acquired in the area must be respected, even if their existence is not altogether obvious. A man who left the country must have made his intention not to return clear, or else his land will be reserved for him for a number of years and even when allotted will be allotted conditionally. If he left relatives - preferably those of his own lineage - they are entitled to his land[2], if only they care to exercise their right. Similarly, a man cannot cultivate land which has become vacant on the death of its owner, because there may be heirs and these have a prior claim to the land. The fact has also to be taken into account that a man who is cultivating a plot is allowed to enlarge it in whatever direction he may wish, subject only to similar rights on the part of his neighbours. Or he may not exactly be enlarging it but using new adjacent land for the time being only, while some of his old land is left fallow.

A man wishing to open up a new plot has to take these rights, actual or potential, into consideration. If there are neighbours to the plot he has in view, he ought to consult them, not only for the reason given - that they may wish, and are entitled, to extend their gardens in any direction - but, it seems, for the further reason that he must make sure that his presence is socially acceptable to people previously settled in the area.

(1) It is also fertile and well watered.
(2) See below, p.218.

Having made these enquiries, a man will then address the African authority of the area where the land is situate - normally a nyakwawa (village headman) but sometimes a mfumu (chief)[1] and will inform him that he would like to cultivate such and such land. If his findings were correct and no prior rights exist over that land, the nyakwawa must give his approval. Informants insist that there is no question of the village headman or the chief allotting the land. Their only right is that of being informed.

If, however, the applicant is a stranger to the area, the procedure is somewhat different. The nyakwawa of the area where the man wants to settle will take him to the chief - or at least will speak of him to the chief - and only then can the stranger occupy land; the process of choosing the land is also uncommon in that the co-operation of the nyakwawa is necessary. It is clear that a political question in involved, namely the stranger's acceptability as a subject; but there also appears to be the assumption that a stranger cannot be expected to know which rights do already prevail in an area and has to rely on the guidance of the nyakwawa for choice of a plot.

Residence is the legal basis for occupation of land only up to a point. A man may cease to live in a village and move somewhere else and still maintain rights over the land he previously held, provided he continues to make some use of that land. Conversely, men living in congested areas often ask village headmen of other areas permission to cultivate there, although they do not become residents to the new place.

As indicated, there are also derivative ways of acquiring land. A man is normally given a plot by his father at the time of his marriage. If the father owned several plots, and this is not infrequent in Angónia, it is likely that he will choose one for his son. Or the father may give

(1) In villages where there is a mfumu he performs the functions of both mfumu and nyakwawa.

him an uncultivated part of his own land - either a piece left fallow or a new part adjacent to his plot (to which, according to our concept of law, he has no definite right but only something like a right of preference or a potential right). Or the father may borrow a plot for his son from one of his friends or acquaintances. The purpose of this donation I do not find entirely clear, since there is still the possibility in most areas of any man opening up new and more fertile land; it appears that this donation might serve no practical purpose but have the important role of strengthening patrilineal ties. The fact that it is the father, and not the son, who borrows a plot, seems to lend weight to this suggestion.

Loans of land are very common, the main reason for this being that Ngoni methods of cultivation are such that land does not yield maize but only unimportant crops in the first year of cultivation. This is why a newcomer to the country needs land which has already been tilled to produce maize for him, even if he immediately opens up a new plot. Similarly if a man is staying in the country for only a short while, he will be ill-advised to start a new garden which will only give him sorghum, peanuts, pumpkins or sweet potatoes; the orthodox solution will be to borrow a plot. In a few areas too (like the regedoria[1] of chief Dama) loans of land have become the only possible means of acquiring land. With well-defined rights over fallows and a high density of population, practically all land is claimed by someone or other and permission to cultivate has to be sought.

In all cases loans of land are entirely gratuitous, although the beneficiary of a loan is expected to show his gratitude in future, should the occasion arise. Loans are normally made for a period of one to three years. In the case of longer-term leases the two parties come to think

(1) The area of a mfumu.

of each other as pfuko, a vague expression indicating remote ties of kinship and also very close friends. The contract can be terminated by either party at any time provided that the lender ought not to ask for the land to be returned immediately and will do so only if relations between them have deteriorated. Due notice should be given and it is felt that the proper behaviour is to tell a man after his harvest has taken place that he should plant no more crops when the rainy season starts a few months later.

Land is not acquired in Angónia by any means other than those mentioned, except by succession to land rights which will be dealt with separately.

Mortgage and pledge of land, common in some parts of Africa even within the framework of customary law, are unknown in Angónia. Sale of land is also not practised, perhaps for the simple reason that no one will pay for that which he can have free. As far as I could ascertain, people would have no religious objection to the idea of selling land if only it would make sense to them. Land is commonly said to 'belong' to the Government'. When I put the leading question of whether my informants did not believe that land belongs to God one of them replied that this might be so but that God does not speak to the people, only the Government does. It would be worthwhile investigating whether the concept of land as deprived of any sacred significance can be explained in terms of the migratory history of the Ngoni for the last hundred-and-forty years or whether the association land-ancestors-God is by no means a constant of African thought and belief.

b) Usages given to different plots

A monogamous man may have one plot which he cultivates with his wife or several plots which he also cultivates with her. If he is polygynous, each wife will have her plot and he will share in the cultivation of each, but the situation is not unknown whereby a man hires labourers to work in his big wife's gardens whereas he himself helps the other wives.

If a man is polygynous it is more likely that he should have a plot for himself alone, of which produce he disposes with entire freedom; such gardens are called cigunda or cirere; while the bigger garden which a man cultivates in common with his wife has the general designation of munda.(1)

The purpose of men's gardens is to allow the men more freedom in disposing of the produce, either to entertain family or relatives or to help a wife whose harvest was a poor one. These gardens are not popular and men are said to dislike cultivating on their own; they only resort to this device as a means of avoiding friction with wives.

The term cigunda also applies to any garden cultivated by a single person. Young girls often have small gardens 'for amusement' which they acquire through some female relative, usually an older sister who gets married; they are considered unimportant gardens. Unmarried men normally cultivate their parents' gardens only and own no cigunda.

Gardens of an altogether different type are those known as dimba or garadeni (a corruption of 'garden') or horota (a corruption of the Portuguese word 'horta'). They are smaller in size and are situated by the riverside. Vegetables of different descriptions are planted in these gardens in the dry season after the harvest in minda has taken place. In some cases dimbas are used to produce two harvests, one of vegetables and the other of maize. Rice can be sown in the rainy season, but this has not been tried in Angónia.

Dimbas are very common among the Ngoni of Zambia; in many areas they represent a break through the old subsistence economy and are the main source of cash income of cultivators.(2)

(1)pl. minda.
(2)M.J. Priestley & P. Greening, Ngoni land utilisation survey, 1954-5, Lusaka, 1956.

In Angónia they have had no such revolutionary effect and are far from being popular. The scarcity of markets is probably the single main factor responsible for this lack of interest of the Ngoni in what could be, in different circumstances, a profitable enterprise. There are markets only in Vila Coutinho Nova, Vila Coutinho Velha[1] and the Lifidzi. Besides, the few Europeans who live in the area usually have their own gardens.

Dimbas are also said to be unpopular because the months from about May to November are those in which the religious ceremonies referring to the previous year or two are held[2]. Dimbas have to be cultivated precisely during such months, which the Ngoni feel ought to be dedicated to other matters and to resting and drinking moa or pombe.

Whatever dimbas exist they have to be fenced because they are cultivated at a time when harvests have taken place in other gardens and cattle are left to graze where they will, eating maize stalks wherever they can find them.

An important difference between dimbas and minda is that the former can be cultivated for twenty or more years without becoming exhausted, while minda, unless they are exceptionally fertile, must be left fallow after they have been cultivated for about five or six years. But as there is still the possibility for each person to find in some way or another extra land to allow his former garden to be given a rest, the greater fertility of dimbas is not a decisive factor.

As in many other parts of Africa, the government has forbidden the so-called gardens of the chief which were in fact cultivated in the public interest, since from them large quantities of grain were obtained to be

(1)The Old and the New Vila Coutinho.
(2)If the previous years were years of shortage of food, brewing of beer (from maize and finger-millet) and religious cereomines are postponed until better times.

consumed in times of famine and not merely to enable the chief to entertain his guests - although this too should probably be viewed as a social duty and a service to people who had business to attend at the chief's village, rather than a sumptuary expense on the part of the chief. Such communal gardens were called gara by the Ngoni, and the name is still used for the chief's private gardens. The term applies in fact to any garden which is cultivated by salaried labour.(1) The difference between a man's cHigunda and a gara as far as I could ascertain is that the latter is cultivated by outsiders to the family as the old chief's gardens were.

c) Methods of cultivation

Margaret Read, writing on the Ngoni of Nyasaland(2), puts forward the opinion that the Ngoni introduced new seeds and new agricultural techniques which were far superior to those practised by the local peoples whom they trained in their advanced methods. One of the features of such improved agriculture would consist in cultivating in ridges instead of in mounds as the local peoples did. In Angónia, too, the opinion prevails that in the past indigenous tribes cultivated in the manner described, different from that of the conqueror Ngoni(3), but informants proceed to say that at present it is only a matter of personal taste which form of cultivation one adopts. Ridges are locally called

(1) Payment of agricultural work is around 1s./day for men and 6d. for women, or a tin of 18 litres full of maize for three days work. More often payment is made either in meat or in groceries.
(2) 'Native Standards of living and African culture change' - Suppl. to Africa, XI, 3, 1938.
(3) Yet let it be noted that the Mpeseni Ngoni of Zambia have shown enormous reluctance to adopt the system. Administrative reports repeatedly refer to the Ngoni's rejection of ridges which they believed to be responsible for a number of bad harvests. As late as 1955 it was written in the annual report on African Affairs for the Eastern Region of N. Rhodesia: 'As to Ngoni Native Authority, little more than lip service has been paid to soil conservation measures(...) The Ngoni villager still plants in mounds and not in ridges' (My italics).

mizere, mtumbira wa utali or simply mtumbira, whereas the small mounds are called katutu, a term also used for any small mound of whatever kind. The former method is far more common in Angónia, although there are areas (such as Dene, some 15 miles from Vila Coutinho) where katutu predominate.

According to informants in Angónia, if there is no need to fell down trees, a munda is started in either one of two ways. In one of them, that said to be typical of the Cewa, small mounds are made of soil filled with dry grass. Through a small hole fire is set to the grass which burns as well as part of the soil. The next month these katutu are planted with pumpkins, cucumbers, mauere[1] or - less commonly - maize. This method has the advantage of allowing for maize to be sown immediately, but the deterioration caused to the soil is enormous and such gardens can be used for one year only and have to be left resting for at least the same period of time. Gardens thus prepared with katutu are called in their first year nfeni or mphanja.

The second way of starting a garden, and by far the most popular in Angónia, is that of making long ridges of green grass which are covered with soil. The grass is left to rot until the following year and in the meantime only unimportant crops are planted on top of the ridges, such as mapira[2], mauere or sweet potatoes. In the second year maize can already be planted on the ridges, while the furrows are used for beans or peanuts. Some Africans follow this pattern for several years while a few others exchange the place of ridges with that of furrows every year. More frequently, ridges are used for both maize and beans, planted alternately, while furrows are left unused. Cassava is sometimes planted in furrows

(1) Finger-millet.
(2) Sorghum.

but it is more common to see it around ~~the~~ gardens, demarcating them. Sweet potatoes are only planted in the first year of a mtumbira; pumpkins and common potatoes are believed to yield best when planted in the ashes of felled and burnt trees if the new garden was one in which there were trees or shrubs. A garden which starts with mtumbira is called in its first year maoza.

Except in the case of pumpkins and potatoes, planted in the ashes, and also in the case of mauere planted in the lowlands, the Ngoni do not cultivate on ~~the~~ flat ground and will always make either mtumbira or katutu. A third method of cultivation is to make round mtumbira, but these do not differ from ridges except in their shape. They are called mtumbira wa laundi, 'laundi' being a corruption of the English 'round'.

The Ngoni commonly cultivate their crops following the contours of hills and although this is done in a rather imperfect manner, some good results are obtained. For this reason, as well as for the use of green grass as manure and for the practice of intercropping, the Ngoni have been considered good cultivators. As in many tribal areas throughout Africa, no use is made of manure. Cultivation is exclusively by hoe and no oxen are used to till the land.

Agriculture in Angónia is not shifting. Villages are not moved every so often on account of soil exhaustion. The peoples of the area either make use of some of their plots at the time, while others are left fallow, or else cultivate new additions to a plot and return to its older parts after these have rested for a few years. No land is definitely abandoned, except sometimes by heirs.

d) Laws of succession

Sometime after a man's death, a meeting takes place which can be attended not only by his family but by anyone who wishes to be present, as well as by the nyakwawa. One or more head of cattle are killed for this meeting and the distribution of the dead man's property is proceeded

with. If the de cujus was a Ntumba, his heir was traditionally a nephew but at present sons are the heirs to property, although office still devolves to nephews.

As to the Ngoni, sons have traditionally been heirs, but the position of the eldest son[1] as main heir has changed. Informants' views in this respect are not consistent and probably reflect a certain amount of confusion in the face of the evolution of customs, but ~~the~~ partition of the estate appears to depend on two factors: its nature and its amount. Informants almost unanimously agreed that, in the case of money, all children should receive an equal share, whereas in the case of cattle the eldest son should have a larger portion[2]. As money was unknown to old tribal societies, the laws regulating its distribution can only be recent laws and it is probably true to say that it is due to European influence that all children are equally favoured in this respect. Cattle, on the other hand, have an important traditional role in securing the deceased's successor the means to carry out rights and duties of the dead man; in fact one expects the role of cattle in the law of succession to be too well-established to be affected by new developments.

Secondly, distribution of the estate also appears to depend on its amount. If the estate was small, informants say, all children should receive an equal share, but if the deceased was a rich man (or rich in African terms) then the eldest son should have a larger portion. It appears that, again, concession to new customs is only partial and that whenever the possibility exists of enforcing tradition, this does in fact prevail.

(1) Eldest son of the 'big' wife (the first wife).
(2) Partition of the estate is carried out on the basis that each son should be given some cattle (the widow as well if, and only if, cattle are still available after all children have been allotted at least one head); once this is done, all the cattle that remains is held to belong to the eldest son. The sons of a deceased man are under no obligation to give any part of the estate to other members of the lineage, but they may do so if they wish.

As indicated, the property of the de cujus - personal objects, cattle, money - is divided at a meeting called specially for the purpose, shortly after death has taken place. It is desirable that elders (amakosana and alumuzana)[1] and the largest possible number of people attend it, in order to witness the decisions arrived at, in case future disputes should arise. The presence of the nyakwawa is indispensable, although he does not himself divide the property and is only a privileged witness. The estate is divided by the sons of the deceased if they are of age, helped if necessary by their father's brothers and elders of the village or its neighbourhood. If the children of the de cujus are too young, the brothers of the dead man proceed to the partition.

Division of gardens is not discussed at this meeting and we can thus say that land is not considered part of the estate. A new meeting is only called when and if the need to divide the land arises; in such case, elders, village headman and neighbours would be present.[2]

Rules of succession to land are very fluid indeed. In many instances the death of a man causes no dramatic changes in the pattern of land tenure. As he grew old, one or more of his sons had started to cultivate land which he used before, and on his death the same situation continues and no need is felt to discuss the matter. If the deceased was still cultivating his land, his place can be taken by whichever relative requires it, provided that the children of the deceased have the best right.

It is not often that all the heirs of a deceased want the same plot; either because they have taken to other occupations in towns, or because their father's land is exhausted, they prefer to open their own garden if they do not already have enough land. A further reason given to me

(1) Alumuzana in Angónia (not in Nyasaland at the time M. Read wrote her book) are councillors to the chiefs; they are elected for life and can be Ntumba as well as Ngoni. Amakosana are respected men with many dependants; they live on their villages and not necessarily near the chief, like the alumuzana.
(2) See below p.215.

why inheritance of land failed to take place in many instances was that men often moved from one village to another in order to avoid compulsory labour[1] for the government. Often, too, land is not taken over by any male heir because it is considered exhausted, but women tend to prefer it because it is easier to cultivate. Again, it is sometimes possible for each child of the deceased - male or female - to inherit a plot each, if their father owned more than one, a situation which is not infrequent in Angónia.

If in fact the same plot is wanted by more than one child, land can be divided. This situation does not appeal to the Ngoni, except in the relatively rare instances in which the deceased left large and fertile gardens. Rather than divide a plot, the Ngoni will give it en bloc to that relative (preferably a son of the deceased) who is in greater need of land - and this is hardly surprising if one bears in mind that plots are normally of a size such as a woman would cultivate with the help of her husband, and can hardly be of any use if divided between a number of people.

Even if partition is eventually to take place, this may not happen for a long time after a man's death. The normal procedure is for the eldest son to take charge of all the land and to give portions to the various brothers and sisters as they may require it. Whether or not the eldest brother is entitled to keep a larger share for himself, I was unable to find out. Situations in which large gardens are partitioned among a number of people are probably too rare to create a legal rule. Alternative modes of acquisition are not lacking and there is no need at present for the law of succession to immovable property to be any more

(1) Now abolished. The decree No. 43893, 6/9/1961 abolished the status of indígena and obligations thereof (see ante, p.130).

precise than it is.

When division of gardens does take place, the sons of the deceased and the important men referred to before will go to the actual site of the gardens. As before, the nyakwawa will be present but for no other purpose than to witness the act. If no dispute arises, the eldest son of the deceased helped by his brothers divides the land; otherwise alumuzana and amakosana settle the matter.

Whatever division of land takes place, it is never done to the detriment of the widow. She remains on the land and is entitled to whatever part of her former gardens she has the strength to cultivate. No meeting is necessary to arrive at this conclusion and she needs not ask permission of anyone, either the husband's family or the nyakwawa. As in the case of adult children cultivating their parents' land, succession by widows can also be said to be automatic.

Whether the widow does not remarry or whether she marries a brother of her dead husband[1] makes little difference to her occupation of land.

(1) On a man's death, widows can be asked by one of her dead husband's brothers to marry him. The men will decide between them which wife they want to marry and will take into account their personal feelings as well as the woman's qualities as a worker; they will probably also take into account the fact that she has, or has not, children. Those widows who are not remarrying - either because they refuse to do so or because they have not been chosen by the deceased's brothers - can marry other men, but it appears that they cannot leave the village if they had children by the deceased. The new husband has to pay to the de cujus' family a head of cattle, but this merely entitles him to exercise conjugal rights over his wife and not to take her children by a previous marriage away. My investigation on matters relating to payment of bride-price was very superficial, but it is quite probable that what has been said applies only if bride-wealth was paid in the first marriage. Cuma or malowolo is not invariably paid by Ngoni men: Some families consider that a marriage without payment of lobolo is no marriage, others that it is inconvenient because, if the marriage breaks down, lobolo has to be restored to the man's family.

No woman would be asked to leave on the ground that the land she was occupying was required for some other purpose. Social factors, such as her relations with her in-laws and the existence of children by her previous marriage, are far more important considerations than land itself. If, on the other hand, the woman remarries a stranger to the husband's lineage, she will become integrated in a different social group and there would be no justification for her remaining on the land: for this reason alone she would leave. In other words, it is misleading to discuss whether or not a widow 'has the right' to stay on her dead husband's land, because such 'right' or the absence of it have no weight in deciding what in fact a woman in such circumstances shall do.

Women do not succeed to the gardens (cigunda, cirere or gara) of their husbands cultivated without their help. This may be so, not so much because they are excluded by the laws of succession, but because in practice women cannot work several gardens without a man's help. Furthermore, as already stated, succession to land rights tends to be automatic, unless there is a strong reason to the contrary. The wife and young children of each 'house' will continue to use the field they cultivated before, and no other. Another reason why women do not inherit these gardens is probably because they would have to inherit them jointly and it is a known fact that African women do not work together in the same fields, except for some occasional help.(1)

On the subject of succession to a woman's land there is very little to say. As the Ngoni are almost invariably virilocal, plots held by women are normally abandoned at the time of their marriage in favour of the woman's mother or a younger sister. A married woman's land is normally

(1) Inheritance by women of such gardens might also be viewed as a betrayal of a man's wishes, since these gardens are meant to secure a man independence from his wives.

that which she acquired through her husband. On her death the land returns to him. He will either cultivate it himself or, as is more likely, give it to a new wife. In the case of death of an unmarried woman, her small plot of land reverts to the donor (usually her mother) or is inherited by a sister.

As to dimbas, they are practically never inherited.(1) There is an abundance of dimba gardens in relation to the demand for them and anyone can open a dimba whenever he wishes. Rights over fallow lands are recognised from one dry season to the next, one year after, but this is as far as the land law relating to dimbas has evolved.

e) Powers of African authorities with regard to land

The presence of a chief (regedor, mfumu) in a given village usually excludes that of a village headman (chefe de povoação or nyakwawa) in the same village. Where there is no nyakwawa, the mfumu is in the same position with regard to land as is the nyakwawa of a village where there is no mfumu. Politically and judicially, of course, the mfumu has a higher rank than the nyakwawa, but the powers of both authorities on land matters do not differ, except in so far as strangers are concerned.

Informants state that in the past a man was not free to cultivate where he pleased and that plots were allotted to him by the chief. Whatever the position may have been, at present any member of the community can, of his own accord, choose his land and merely inform the authority of the area of the decision taken.

Where the participation of chief or village headman becomes necessary is in transactions involving a wide circle of persons, where the probabilities of future litigation are higher. If a man emigrates or dies, his

(1) Their cultivation is a modern development in Angónia; young men rather than old men own dimba gardens.

wife and children have the best right to his land and nothing need be said about it to the nyakwawa. If the persons interested in the land are brothers to the person who has left the village or died, this is still not a matter for the nyakwawa, although they should inform their own family of their decision to occupy the land. If more remote relatives wish to settle in the land they cannot do so without speaking to the brothers of the owner of the land but the case still does not concern the nyakwawa or mfumu. Only if the persons interested in the land are complete strangers to the family, is the occupation of land a matter for the authority to decide. The chief or village headman will find out whether the owner of the land intends to come back and when, and will decide either to allow or to deny possession of the land; if he agrees to the request he will grant the land on condition that it be returned to the owner when he comes back. The African authority also disposes of the land of a deceased person if he left no relatives and strangers want to cultivate his gardens.

The function of the nyakwawa[1] is thus that of securing that private rights are not infringed. He also arbitrates in land disputes, but these are not common in Angónia as a whole and arise only in a few congested areas. When they do arise it is either because land which is left unused is wanted by another or because the right to expand one's garden is being disregarded by another person. The nyakwawa has no right of occupation which other Africans cannot enjoy as well, i.e. he can occupy land only in so far as he is not violating existing rights, even if these do not appear to be exercised.

Some modern developments have occurred here and there which deviate from customary law. For example Chief Maritene of Dómuè requires that

(1) Typically the nyakwawa, but also the mfumu in villages where the latter is the only authority.

his permission be asked by anyone who wishes to cut wood from a small forest in his area.[1] Scarcity of wood in various parts of Angónia causes difficulties and chief Maritene has decided to regulate the consumption of an item which was traditionally common property.

f) Rights over land

There are some rights which a man enjoys with regard to the land he cultivates whatever the means of its acquisition. A man who cultivates his land with his wife and children has entire freedom to plant any crops, at the time he thinks is best; the produce of such land belongs to him and his wife and he can always sell it, give it away or consume it as he pleases. His land is not cultivated with the co-operation of the extended family and he has the freedom referred to irrespective of whether his land was given to him by his father, or was opened by himself.

The limitations to the right of a landowner only arise when he considers alienating his land, either temporarily or permanently. The distinction between the various modes of acquisition then becomes relevant, for if a man cleared land for himself he can lend it or give it away (he could also presumably sell it) without consulting anyone except his 'big' wife and any other wives likely to be affected by the transaction. If, on the other hand, the man inherited the land, he cannot dispose of it without asking his brothers' permission or, in their absence, that of other members of the patrilineage; should consent be refused transfer must not take place. It is true that even if a man cleared a plot of land himself, he will still inform a trusted relative, normally a brother, of the intended transaction; but informants insist that in this case he does so merely as a matter of precaution, to have a witness on his side should

(1) The chief's ruling only applies to a given forest and not to the many isolated trees to be found in his area.
It is probable that this step may have been suggested by the district commissioner.

misunderstandings and litigation arise in the future.

This inability of a man to dispose of the land he inherited without asking his lineage's permission does not justify, in my view, classifying inherited land as 'family land'. As Prof. A.N. Allott puts it:

> 'When one says that the land is 'held' by a family, one means that the ultimate title (subject only to any paramount title or powers of a political authority (...) is vested in that family as a unit. The management of such family land (but not title to it) is vested in the head of the family, who controls the land on behalf of the family, advised by the senior members of the family. If the family are dissatisfied with the way in which such management has been carried on, they can depose the head of family and appoint another in his place. The family members' control over the deeds of their head is thus substantial.
>
> Even though title to family land is in the whole family jointly or corporately, the use of it is divided up within the family (....)'.(1)

The system of land tenure prevailing among the Ngoni of Portuguese East Africa presents no common features with this description. The family exercises no control over the manner in which a man and his wife administer the land and does not derive any benefit from it. The right of the lineage is merely what one can call a right of preference in all proposed alienations, a right which may find its raison d'être in the fact that on the death of a man partition of his land only infrequently takes place. Let us recall that the garden of the deceased is normally occupied by the member of the family who is in greatest need of land.

(1) The Ashanti law of property, Stuttgard, 1966, pp.145-146.

There is nothing incongruous in the view that those who have ceded their rights for the time being have not in fact waived them completely and can invoke them whenever convenient. A likely occasion to put forward one's claims is precisely that time when the original heir appears to have ceased to require the land.

I was unable to investigate this matter adequately but it appears that lineages in Angónia are not corporate groups[1]; being loosely bound, they are not effective units of land ownership. The looseness in the way terms expressing kinship ties are employed hints at the looseness of the ties themselves. Thus the term mbumba which for the Cewa or the Yao indicates a very definite relationship, for the Ngoni has the vague meaning of 'dependent', 'all the persons a man sees as he looks down'[2] or even the vaguer meaning of 'many people' or 'a crowd'[3]. Similarly pfuko,

(1)Until the 1950's it was believed that typical Central African social system was characterised by lack of corporate lineages such as are found among the southern Bantu. Subsequent writings by J.C. Mitchell show that the Yao are organised in distinct corporate matrilineal lineages. The original question of whether or not there is a Central African type of kinship was not discussed again in the light of these findings until Mary Douglas related it to the institution of pawnship. She suggests that there are several types of kinship system, including pre-and post-colonial types, and that one of the pre-colonial types was characterised by corporate descent groups, not necessarily lineages, whose corporateness depended on joint property in pawns, themselves forming associated descent groups. (M. Douglas, 'Matriliny and pawnship in Central Africa' Africa, XXXIV, 4, 1964, pp.301-13).

(2) As my informant, ex-chief H. Kachere of Nyasaland, now residing in Angónia, put it. M. Read too noted that 'Another Cewa term, mbumba, was used in two distinct senses. The common use was to express the relationship of one man with his sisters and their children who inherited his position and his property and looked to him for assistance. A much less common use of the term was found sometimes in central Nyasaland and occasionally in north Nyasaland to cover a group of a man and his children and his brothers and their children - a patrilineal concept of a kinship group (my italics) which was usually but not always associated with common residence'. (op.cit., p.133).

(3) Father J. Kamtedza, the first Portuguese Ngoni to be ordained; author of a dictionary of nyanja.

a term which writers on Cewa customs [1] have no doubt in translating as matriclan, is also commonly used by the Ngoni with great freedom to mean the whole of one's relatives in any line whatever and even close friends.[2]

A man's powers over the land he occupies may also be limited by the nature of the contract he has entered into. If a man borrowed a piece of land he cannot alienate it without the lender's consent. In Angónia loans of land are entirely gratuitous, commonly last for two or three years and can be revoked by either party, provided that the lender must give reasonable warning that he will be requiring the land for himself.

A man is ~~laos~~ limited in his power of disposing of land by the need to seek the approval of the wife concerned and would never alienate land which one of his wives was cultivating without her consent. In the case of the senior wife, her opinion carries particular weight, even in matters which the man would be entitled according to customary law to decide by himself.

As to ~~the~~ disposal of crops, the broad rule is that the party to the marriage who contributes more effort to the cultivation of a garden has more ~~to~~ say in disposing of its products. In monogamous marriages both spouses have the same rights, but if the marriage is polygamous women have greater power of disposal than have their husbands who cultivate less regularly. Conversely, both in cigunda and in dimbas, which are mainly men's gardens[3] cultivated with only the occasional help of women,

(1) E.g. Marwick.
(2) The example given to me was that of men having worked together in the South African mines later considering themselves pfuko to each other.
(3) The dimbas particularly involve a number of jobs, such as fencing the garden and making furrows for the water, which are considered not to be women's work; it is also said that these gardens should be hoed more deeply.

a man is free to dispose of its produce. In both cases, however, if a spouse is 'a good spouse', he gives part of the product, or the corresponding amount in cash, to the other party to the marriage; but there is no legal obligation to do so.

I have been discussing rights to land and the way in which they are limited by concurrent rights over the same land. I should now give the other side of the picture, namely their permanence and what one can call their resilience to assaults by third parties. Informants state[1] that a man who comes back after an absence of 15 or 20 years is still entitled to the land he once occupied. Rights over fallow lands are also respected. A man normally cultivates a plot for four or five years (sometimes ten years, if the land is exceptionally fertile) and then lets it rest for a similar period of time. No one else is entitled to use that land without permission. This protection of rights over fallows extends to the fruits of trees planted by a man: these can only be collected by the person to whom both land and produce belong.

The situation has not yet arisen in Angónia of crops being sold independently of the soil in which they grow. The Ngoni have not taken this first step towards the sale of the land itself. But the sale of timber from a trees is common in some parts of Angónia where it is scarce and something like 50 pieces of timber will be given for about 2s. 6d. Timber to be consumed as fuel is, in fact, so scarce in some parts of the country that dry maize plants left after the harvest are valued as fuel and it is an offence to remove them from another person's land.

Land, forest products, wild animals, are otherwise free for all. Indeed one can say that labour alone causes vacant lands to become the property of the person who cultivates it; forest fruits belong to no one

(1) Among whom Chief Dama.

until they are picked up; and wild animals have to be caught before they can be said to have an owner.

It was thus with some surprise that I was told that a family of old Ngoni, the Ngozo or Maponye clan,(1) has enjoyed exclusive rights over a forest for a number of generations now. I was unable to find out the frequency with which such individual rights over forests occur among the Ngoni, but considering the high rank of the clan and its close association with the royal Maseko,(2) it is probable that this privilege may be quasi-regal and most untypical.

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(1) One of whose members, Gervásio Ngozo, a clerk at the Veterinary Station, was my informant.
(2) The Ngozo clan in older times provided the 'royal shadow' who was an alter ego to the Maseko Nkosi, ate with him, was seen with him on all important occasions, etc; on his death, he threw himself on the pyre (M. Read, op.cit.,p.62)

CHAPTER XIII

The Cewa[1]

General - The Cewa of Mozambique live mostly in the present circunscrição of Macanga but also in the contiguous circunscrição of Marávia - (mainly in the administrative post of Vila Vasco da Gama (Chiputo) -), both of which are North of the Zambezi river[2].

These areas are sparsely inhabited, having supplied neighbouring territories with large numbers of people, perhaps for more than a century. Authors writing at the turn of the century referred to the exodus of Africans from Mozambique and explained it in terms of the compulsory labour in Mozambique, the difference in the amount of tax payable by Africans in Mozambique and in neighbouring territories, the shortage of shops where Africans could sell their produce, the higher prices to be paid in Portuguese territory for cloths and other items, military service, the arbitrary actions of sepoys and soldiers, etc.[3]

The Livro de Registo Biográfico das Autoridades Gentílicas of Vila Vasco da Gama (Marávia) reports a number of cases when African chiefs abandoned their lands and departed with their people into neighbouring territories. Between 1920 and 1930 'the big chiefs having lost their prestige, emigrated; this region, once densely populated, is now almost a desert'. The Register goes on listing the misfortunes of

(1)In the case of the Ngoni (see previous chapter) I had no access to administrative reports and had to rely entirely on informants. This was not the case in the circunscrições of Macanga, Marávia and Vila Cabral (Chapters XIII & XIV) where ample use was made of existing administrative material.
(2) See maps on pp. 196, 198.
(3) See ante p. 153.

Maraviland: 'For reasons unknown to us in 1936 and 1937 took place the terrible flight of whole chiefdoms of Nsenga in the areas of chiefs Chofombo and Cachombo'. A few years before, in 1927, two chiefs, Chotaica and Chiuma, departed with their people. Finally, 'general discontent', the Register reports, made Undi leave in 1935 and with him thousands of people.

The situation for many years was therefore that the vast areas of Macanga and Marávia - altogether some 51,500 sq.kms. - were depopulated both because of the pressures put on Africans by the Administration and because Africans did not have the facilities (however precarious in themselves) which they enjoyed in the neighbouring territories.

One may cite as ~~it was~~ an example of the harshness of administrative rule - leaving alone other and more regrettable aspects of it - that no African could move away from the circunscrição where he resided without reporting the matter to the district commissioner and have what we may call a 'visa' in his pass (caderneta).(1) Temporary banishment from the area was also a common punitive measure. Whenever a crime was punishable with more than two months imprisonment, the sentence had to be served in a circunscrição other than that of the permanent residence of the convict.(2)

(1) This, according to one report, made for emigration because, whereas in neighbouring territories the situation of an emigrant was immediately legalised, in Portuguese territory the African had to walk sometimes dozens of kilometers to obtain the 'visa' referred to, or else he ran the risk of being imprisoned for a month and sent back to the circunscrição where he was a resident. This was in fact not just administrative practice but the law - document 37 of the 'Compilação das Ordens e Instruções de Carácter Permanente'.('Relatório sobre a mão de obra indígena referente a 1959' - Agência da Curadoria dos Indígenas da Macanga, 1959).
(2) Decree No.34.498, 1951, art.7.

The so-called 'labour contracts'[1] were perhaps the most important single factor responsible for emigration. Portuguese law provided for compulsory labour: a) in the case of convicts serving sentences of more than six months[2]; b) in the case of 'public calamity', c) as a form of taxation (contribuição braçal) - five days' work per year in public works.[3] Besides these cases specified in the law, it was also the alleged policy of the government to fight vagrancy, and the principle that 'to work is a moral duty' was advanced to justify pressures put on Africans, amounting virtually to compulsory labour. Until 1926 (when Portugal signed the Convention on Slavery), the legal duty of Africans to work was part of Portuguese law.[4] From that date onwards, the only reference to the subject to be found in a major law is that of the Estatuto do Trabalho Nacional, art.21 (applying to continental Portugal as well as to overseas territories) to the effect that 'To work.... is to all the Portuguese a duty of Social Solidarity'.

Provisions of the Código de Trabalho, 1928, do not refer to 'the moral duty to work' and merely stress that Africans must be given the choice as to whether they want to work on their own or for an employer, and which employer.[5] Summarising: had the law been complied with, as long as a man supported himself and his family and paid his tax, authorities should not interfere with him. But what in practice happened was

(1) Abolished in 1961 when the status of indígena was abolished (see ante p.130).
(2) Decree No.39.688, 1954, art.16, provided that any African sentenced to imprisonment for over six months could be ordered to do forced labour instead. Such work was paid.
(3) This work was in the nature of a tax and, as such, unpaid. Africans could avoid it (and often did) by making a given payment in money.
(4) The idea that 'to work is a moral obligation' first found its way into Portuguese law in the Regulamento of 1899 of António Enes. It provided that if the native could not prove that he had worked at least six months every year, the state could compel him to work in public works; when these were not available, Africans could be compelled to work for private employers. The new Republican regime which took power in 1911 did not substantially alter the Regulamento, which remained in force until 1928.
(5) Also, Lei Orgânica, 1930, Base LXXX VI.

that cultivators working on their own were not held to be fulfilling 'the moral duty to work' and were called to do both public work (in excess to the contribuição braçal) and private work. By a slip of the pen one administrative officer in one of his reports describes how contracts were made: 'The chiefs are called to the Boma and here they are told the number of workers which it is their share to provide'.(1) In other words, if things were done as they should, only 'vagrants' in a chief's area would be available for the 'contracts', but we see that, instead, the number of workers was pre-determined by public and private demand and divided between chiefs who had to contribute the quota allotted to them. In an official document of the administrative headquarters in Tete it was recognised that 'the African is usually very attached to his land which he only leaves, as a rule, through a fault of ours. The breaches of the law of certain administrative officers in Macanga have caused, and even justify, these flights'.(2)

Not only did Africans resent being compelled to leave their homes and fields and be made to work in distant places(3) but the salaries paid were also unattractive. One report mentions that one of the big companies recruiting in the area, the Companhia Colonial do Buzi, paid £1.0.8d. (82$50) per month whereas in Rhodesia farm work was paid at the rate of 100$00 (25 s.) and work in mines and public work at 125$00 (£1. 11s. 3d).(4) In addition, the cost of living in Portuguese territory was much higher. 'No native policy can be effective in the face of such fundamental facts as these', complains the author of a report.(5)

(1) Notice that the law (Código do Trabalho, 1928), art.38, specifically forbids administrative authorities to recruit for private firms; all they are expected to do is 'to facilitate the work of all those who need to recruit workers' (art.36 to 38 of the Código).
(2) Letter of the Intendência do Distrito de Tete, 17/10/1949.
(3) E.g. many men recruited by the Government in Macanga were sent to work for the railways of Beira and Tete and the port of Beira.
(4) Report by the district commissioner of Macanga, 1944.
(5) The district commissioner of Marávia, 1957, p.4.

Administrative authorities themselves realised that compulsory work was a main cause of emigration and the suggestion was frequently put forward that in border areas there should be no recuitment for military service. '....To insist in recruiting will only contribute to the loss of more population in lands which have already been almost abandoned because taxes are, they say, too high'.(1)

The question of hut-tax was always to the fore. In spite of other hazards many Africans were prepared to return to Mozambique (where they had better and more abundant land and more opportunities for fishing and hunting) if only tax did not exceed that in ~~the~~ neighbouring territories.(2) As, however, tax was not reduced, Africans continued to emigrate and not to return. In 1942 ~~the~~ tax for both men and women was 18s. 9d. (75$00);(3) only single women who did not have the means of paying full tax paid the reduced amount of 6s. 3d. (25$00).

As a consequence, in some border areas the situation developed of Africans residing in neighbouring territories (where density of population was very high), paying their taxes there but coming to Mozambique to fish and hunt and even to make their gardens.(4)

In the 1950's emigration was still the major problem of Macanga. The annual administrative report for 1956 gave the total number of men who had emigrated in the previous year as 3,448 (2,905 to the Rhodesias and 543 to Nyasaland), while the administrative report for 1955 had stated that the percentage of males estimated to be working in foreign territories was about 25 to 30% of the total population.(5) In an official document, the

(1) Report by the district commissioner of Macanga, 1936/38.
(2) Report by the district commissioner of Macanga, 1936/38.
(3) Portaria No. 4.768 of 27/6/1942. A man with four wives had to pay £3. 15s 0d. (300$00) in Portuguese territory, as compared to 6s. in Nyasaland.
(4) This situation was brought to an end in the 1940's by the Portuguese district commissioner of the area, by forbidding Africans to harvest their crops until they had paid tax.
(5) Report by the district commissioner of Macanga, p.23.

Report on native labour, 1959, the lack of economic activities in the area as well as the inadequacies of the recruiting companies were considered responsible for emigration into the Rhodesias and Nyasaland; the report concludes that 'natives at that stage of their lives when they are the more productive, emigrate'.(1)

It was noticed by officials that in areas where the cultivation of cash crops was promoted emigration almost stopped. This was the case in the posts of Casula and Chiuta(2) of Macanga. Africans who cultivated cotton were not recruited for 'contracts'.(3) Although the cultivation of this crop was one of the scandals of the time(4) and was disliked by Africans because it made them necessarily neglect their food crops, yet it provided many families with the cash they needed. The conditions of Casula and Chiuta(5) are, however, quite different from those prevailing in the area under study as to climate, altitude and distance from a trading centre. With the Adriano Moreira legislation of 1961 the cotton concessionaires lost their privileges and the companies now merely buy cotton which is being produced without their interference.

(1) Relatório sobre a mão de obra indígena, by the Agência da Curadoria dos Indígenas da circunscrição da Macanga.
(2) In 1959 in the post of Chiuta alone there were more than 1,000 farmers cultivating 2,5 acres each, apart from others cultivating smaller acreages (Report by the district officer of Chiuta, 1959).
(3) This was one of the forms of protection of the concessionaires by the Government. Recruitment for the Rhodesias was also forbidden.
(4) A kilogram of cotton of the 1st class was bought in 1960 from the natives at 8d. 1/2 and cotton of the 2nd class at 6d. 1/2. (Report by the district commissioner of Macanga, 1960).
(5) Inhabited mainly by the Nhungue people from near Tete.

Purely economic factors, such as reduced economic activity in the whole north of the colony, were also detrimental to the interests of Africans. Everywhere Africans had to walk dozens of miles to sell their produce or buy what they needed, and this inevitably led to their being exploited.

Until a year or two ago it was a legal requirement that bush shops had to be built in concrete[1]! As they were also subject to heavy taxation,[2] items in Portuguese shops have always been more expensive than in neighbouring territories. Acute shortage of transport increased expenses and caused the Portuguese shopkeeper to be at a disadvantage when compared to other traders on the other side of the border. Few men have been willing to work under these conditions.

Lack of adequate roads, and hence of transport, is perhaps the greatest evil of these areas. In 1911 a Provincial Commissioner considered that the agricultural poverty of the Tete district was due to lack of means of communication. The situation has hardly changed since those days. I have already described the position in Angónia. In the case of Macanga, its administrative headquarters in Furancungo are served by lorry twice a week, both for passengers and goods. There are no railways in the circunscrição and the airport is for military use only. The headquarters of Marávia are even more backward. Neither railways nor road transport nor aeroplanes reach Fingoè, the capital of Marávia. Post from Tete - the headquarters of the district - is sent to Fingoè every week by men...on foot, each walking 50 miles each way. In many cases bridges are carried away regularly every rainy season, while in other cases there are just no bridges at all, as over the Capoche river which separates Macanga from Marávia.

(1)In border areas shops have no longer to comply with this requirement.
(2)Shop owners have to pay: a trading licence, a rent for the lease of the land and a tax on buildings (contribuição predial). An administrative report dated 1942 mentions that the annual tax paid by African shopkeepers in Nyasaland was £2 and suggested that in Mozambique it should be reduced to £6. 5s.0d. (500$00) - The same report adds that two Africans wanted to start a business in P.E.A. but that in view of the facts they decided to move into Nyasaland.

The Circunscrições of Macanga and Marávia

I shall now refer briefly to the history and general conditions of the circunscrições of Macanga and Marávia which I shall later treat as a single whole, as the people (who were not affected by the various administrative arrangements that took place at different times), still refer to the whole territory as Marávia, that is, land of the Maravi people.

The huge area of the circunscrição of Marávia (about 28,500 sq.Kms.) was, like that of Angónia to which I have already referred, also a land of prazos. By a decree of 24/9/1892 the Crown granted to the Companhia da Zambézia, to be administered either directly or through sub-lessees, the Crown prazos lying north of the Zambezi river and west of the Shire river.(1) The company took possession of its lands in 1893 and the region was then divided into eleven prazos, later sub-leased to Carl Wiese.(2) The prazo system was kept in force until 1912, when six circunscrições were created in the Tete district. In 1919 the circunscrições were abolished and the system of prazos once more put into force. In 1924 some of the leased lands reverted once more, and for the last time, to the direct administration by the State and four circunscrições were created, among which that of Marávia.

Macanga has a similar history, except for the fact that Marávia was occupied peacefully - following the defeat of Mpeseni in Northern Rhodesia and Chinsinga in Macanga - whereas the latter was the scene of a prolonged campaign. The arrendatária was the same Companhia da Zambézia but its sub-lessee was Rafael Bivar who took charge of the area in 1904 together with the prazo of Angónia.(3) Only in 1930 did Macanga become a circunscrição,

(1) The lease comprised also prazos situated south of the Zambezi river and west of rivers Luenha e Mazoi.
(2) By 1901 Wiese was one of the biggest individual concessionaires ever, his lands stretching from the Luia river to Zumbo.
(3) Which he gave up in 1910.

since which date it has been administered by the State. In 1917 the Báruè revolt[1] extended to Macanga (and also to part of Marávia) and the area was thus pacified rather late[2] - which may account for some of its shortcomings.

The circunscrição of Macanga has at present five administrative posts and a total area of 23,000 sq.kms. It lies north of the Zambezi river and is limited on the east by Angónia and on the west by Marávia; its northern boundary is partly Malawi and partly Zambia.[3] Its non-African population (including Asiatics and half-castes) was in 1955, 263 and that of Africans 58,111. The density of population therefore averages 2.4 inhabitants per square kilometer. The number of Africans considered to be non-natives (assimilados) amounted in the same year to 44 in the whole of the circunscrição.

The climate is excellent (average maximum temperature 34°C, minimum 6.4 C) and the fertility of the soil would certainly attract European settlers if it were not for the lack of economic transport which makes the sale of products most difficult. In the plateau area of Macanga (of an average altitude of 2,700 ft.) there is abundance of the best lands for coffee, tobacco, wheat, vegetables, citrines, etc. and the valleys of Bauè have exceptional conditions of fertility. Yet the economy of the area still depends almost exclusively on the cultivation of a 'poor' product, maize. Local Africans cultivate small quantities of other crops, such as beans, rice, sorghum, peanuts, peas and potatoes, which they use almost exclusively for their own consumption[4].

(1) Said to be due to the constant recruitments of Africans for the campaign in the north of the colony against the troops of Von Letow.
(2) Military commands were kept in Macanga for several years after the revolt.
(3) See map on p. 198.
(4) Of the total of 1,521,846 kgs of produce exported in 1954 1,349,975 kgs were of maize. From these figures one can conclude that the remainder products have little economic relevance to the area. (Report by the district commissioner of Macanga, 1955).

On European agriculture, there is even less to say. In 1955 there were only three farmers (two Europeans and one half-caste), all of whom settled around the administrative headquarters at Furancungo. Two of these owned farms of 450 acres each and one a farm of 125 acres; only one of the bigger farmers had all his area under cultivation. These agriculturists cultivate mainly maize, beans and rice and have not so far attempted at using their land for permanent and rich crops'.(1)

In spite of the fact that Macanga is considered to have excellent conditions, over most of its area, for breeding stock, it is again very poor in this respect. The main reasons appear to be 'shortage of markets, restrictions imposed by the Veterinary Department on the aquisition of cattle in Angónia and its transit to Macanga and, finally, lack of incentive to prospective breeders'.(2)

As to native flora, Macanga is not rich in species suitable for use in building and construction, but it is densely covered with vegetation.

Macanga's subsoil is known to be rich and for many years gold mines were exploited in Machinga, Chifumbazi, Missale and other places. At the moment no mines are being exploited and one does not wonder why if one is aware of the difficulties that faced their owners when they tried to sell their gold.(3)

(1) 'Not even for their own consumption have they planted fruit-trees, except for a few dozens of pawpaw trees and mango trees...Two of the farmers own cattle but these have no influence on methods of cultivation, since they have not been trained to work' (Report by the district commissioner of Macanga, 1955).
(2) Report by the district commissioner of Macanga, 1956, p.39.
(3) Several administrative reports discuss the subject. In 1944 there were two mines in the area. Both concessionaires were forced to sell their gold to foreign countries because in the Portuguese territory the Banco Nacional Ultramarino, its only buyer, required among other things that the risk and expense of shipping gold to Lisbon should be on the owners(the bank only bought the gold after analyses had been made in Lisbon) (Report by the district commissioner of Macanga, 1944).

Much of what has been said about Macanga applies to Marávia as well, although Macanga is undoubtedly more privileged in natural conditions. Marávia on the whole enjoys a good climate and good soils but ~~it~~ is sparsely populated for reasons identical to those already discussed. It has an area of 28,500 square kms and it borders with Zambia on the north, Tete circunscrição on the south, circunscrição of Zumbo on the west and Macanga on the east. It is divided into four administrative posts. According to the 1958 census, its African population was 38,336 inhabitants, 34 Europeans and 10 assimilados and half-castes.(1)

The amount of stock kept is negligible. In 1960 no European owned any stock, Africans had 6,200 head of cattle, 588 pigs, 1,205 goats and 70 sheep.

Marávia presents no deviations from the general picture of a dead and depopulated north. Its low density of population - an average of 2.2 inhabitants/sq.kms - is due, once more, to emigration, the causes of which have been discussed. Administrative reports repeatedly refer to the departure of numbers of Africans to neighbouring territories. Most emigrants did not return to Mozambique where they were confronted with a major hardship: as most emigration was illegal, Africans could not allege that they had already done the six months 'work per year required by law(2) and were bound to be called again. Nevertheless some emigration was temporary. To give an idea of its extent it suffices to quote an administrative report which states that 'over 70% of the tax is paid in notes of the Federation' (the Rhodesia - Nyasaland Federation)'.(3)

(1) This figure, incidentally, provides another instance of the negligible extent to which Africans became assimilados.
(2) Now repealed (see ante p.130).
(3) Report of the district commissioner of Marávia , 1962, p.15. I could see for myself while in the north of Mozambique that Africans are much more acquainted with the money of the Federation than with Portuguese money and were much happier to be given a shilling than 5$00, although the latter is worth 1s.3d. They also count either in their own language or in English and tell the time in English, even in places as far away from the border as Fingoè or Furancungo. Although practically no African speaks Portuguese - let alone write it - they commonly speak English.

For a few years now administrative officers have tried to reverse this migratory movement and have attempted to negotiate the resettlement of ex-chiefs in Portuguese territory, but this policy of attraction has not produced any dramatic results. Only during the last two or three years has emigration almost ceased, mostly because there is either actual unemployment in the neighbouring territories (as is the case with Malawi) or at least much less demand for foreign labour; racialist policies in Rhodesia also displease the African. It must also be said, for the sake of truth, that a good deal of reform has been going on since the end of 1961 (Dr. Adriano Moreira's legislation).(1) Administrative officers are now urged to use different punitive methods from those prevailing in older times and instructions to this effect are being complied with. Compulsory labour is also ruled out and generally speaking much of the former tension between Africans and Administration has been released.

It should be noted in passing that past practices of district commissioners and district officers did not derive their authority from the law. At no time did the Portuguese legislation permit corporal punishment and the obligation to do six months' work yearly, if narrowly construed, would never have applied to the large numbers of Africans who were in fact compelled to leave their homes and fields in order to work for some employer, often many miles away. Administrative officers took the law into their own hands, mainly when it was to their material advantage to do so. Things are now changing in Portuguese colonial administration. The status of both district commissioners and district officers is being enhanced and those with degrees are given preference.(2) Portuguese administrative officers are now more competent than they have ever been and cases of corruption, if they ~~do~~ exist, are no longer taken for granted.

(1) See ante pp.130 et seq.
(2) Taken at the Instituto de Ciências Sociais e Política Ultramarina in Lisbon.

The People

The Cewa are generally considered a branch of the Maravi - 'Maravi' being an old designation fallen into decay[1] applicable to several matrilineal tribes related to each other and inhabiting a vast area around Lake Nyasa. A Portuguese missionary, Barreto, writing in 1667, described the Maravi empire, governed by Caronga, which stretched from Quelimane in the Portuguese coast along the Zambezi river for 200 leagues. Some years before, in 1616, another Portuguese, Gaspar Bocarro, reported on his trip from Tete to Kilwa and gave his impressions on the Mang'anja, a branch of the Maravi. Not only have Barreto and Bocarro referred to the Maravi ('the peoples of the flames')[2] but a Portuguese map of 1546 calls Lake Nyasa the 'Lago Maravi'. Livingstone too noticed that the people around Dedza called themselves Maravi. In fact the term has been considered to have such deep roots in tradition that Dr. Banda adopted it as the new name for Nyasaland.

The congeries of related peoples who live around Lake Nyasa is believed not to be aboriginal to the area and to have emigrated from distant lands at an uncertain date, which is perhaps anterior to the 16th century, since by that time the Maravi peoples were already sufficiently numerous to have given their name to the Lake. It is known that they came from Luba or Ulwa in the Belgian Congo and tradition has it that they crossed a large natural arch of stone. A much more diluted and confused tradition has also persisted that they came from further away, from the Sudan or Egypt[3] or Nigeria. A recent book by a Portuguese Nyanja, Assahel

(1) No informant of mine seemed to have more than a vague idea of what the term is supposed to mean.
(2) T. Price believes that neither bush fires, common in many parts of Africa, nor the reflection of the setting sun on the Lake account for the term 'Maravi' and that its origin is probably to be sought in the furnaces for smelting iron, for which the Maravi were famous, lighting the skies at late hours of the night.('The meaning of Mang'anja', Nyasaland Journal, XVI, 1, 1963).
(3) I was given this version while staying in Marávia.

J. Mazula,[1] might interest the experts since his research led him to the conclusion that the Maravi came from Tombuctu, on the Niger river; from there they travelled for many years south-eastwards and once in Choma, in present Zambia, they took the name of Cewa. Some years later they were again on the move and eventually took other names, such as those of Nyanja, Mang'anja, Tumbuka, Cipeta etc., depending on the places in which they settled and other circumstances.[2]

The first Maravi emperor, Caronga, 'having received his power directly from Maquenana, the mother of mankind', settled on the western side of Lake Nyasa, in the slopes of Mt. Chiripa.[3] Either because of a dispute with his nephew Undi, or because Caronga entrusted to him to colonize distant lands, or because Undi was the defeated party in the struggle over Caronga's succession, the fact is that Undi departed from the neighbourhood of the Lake and settled further west, in Mano, near the Capoche river,[4] (in what is now the administrative post of Vila Vasco da Gama, Marávia), where he proceeded to distribute land among important followers, mostly, it appears, his relatives. This would be the origin of, among others, the chiefdoms of Mkanda and Mwase, in present-day Zambia, to which Lacerda refers in his report to his trip to Cazembe. A number of chiefdoms on the eastern shore of the Lake, on the other hand, would, according to Mazula, have their origin in a migration by another relative of Caronga[5], who crossed the Lake and moved northwards along its eastern shore, leaving some

(1) 'História dos Nianjas', 1962. The author appears to have taken great care in collecting his data from elderly and knowledgeable Nyanja.
(2) W.H. Rangeley describes the peoples who were already settled between the Luangwa river and Lake Nyasa and who came in contact with the Maravi as they proceeded eastwards ('The earliest inhabitants of Nyasaland', Nyasaland Journal, XVI, 2, 1963).
(3) 'Narração do distrito de Tete', by J. Fernandes (Chiphazi), unpublished.
(4) This river is the present border, running North-south, between the two circunscrições of Macanga and Marávia.
(5) A brother (probably classificatory) of Undi, 'later called Masumba because he crossed the Lake'.

of his people in various places to found villages. This would be the origin of, among others, the chiefdoms of Katur and Mponda of Nyasaland and Portuguese East Africa, later to become so absorbed by their Yao surroundings that they came to be considered Yao.(1) Whether the findings of Mazula are correct or not, there are factors, such as clan names and social organisation, which suggest a common origin.

I have mentioned that the term 'Cewa' appears to be of far more recent origin than that of 'Maravi'. It is at least not used by any of the Portuguese authors quoted and seems to appear for the first time in A.C.P. Gamitto who describes both Maravi and Cewa in his report of his trip to king Cazembe.(2)

The Cewa under its various names ('Cipeta' in Malawi - mainly in the Lilongwe area - and 'Azimba' in Macanga and Marávia) are believed by M.G. Marwick to amount to between 900,000 and one million, of which about 77% inhabit Malawi (mainly Dowa, Dedza and Lilongwe), 14% live in Zambia (Lundazi and Ft. Jameson) and 9% in Mozambique.(3) The Cewa also account for two-thirds of the Nyanja-speaking population; they are as many as one-third of the total African inhabitants of the area limited by Luangwa river, the Zambezi river and Lakes Nyasa, Ciuta and Cilwa.

The Portuguese official census for 1940 gives the figures of 6,700 Cewa-Cipeta in Angónia, 4,010 Azimba in Marávia and 46,657 Maravi-Azimba-Cewa in Macanga.(4)

The term 'Azimba', although derogatory, is widespread in Macanga and Marávia and has been considered by authors (i.a. Marwick and Rita-Ferreira(5))

(1) Mazula, op.cit.
(2) 'O Muata Cazembe', Lisb.,1854.
(3) 'The sociology of sorcery in a Central African tribe' (African Studies, 22, 1, 1963).
(4) According to the best sources available, a distinction into Maravi, Cewa, Cipeta and Azimba is meaningless, but I am using the terminology of the official census.
(5) 'Agrupamento e caracterização étnica dos Indígenas de Moçambique'; also, 'Os Azimbas' (Boletim da Sociedade de Estudos de Moçambique 84-5,1954).

as synonymous with Cewa. The term appears to mean 'people of the caves' and also by extension 'primitive people' and alludes to the hard times when they were attacked by the Ngoni (and later by the Portuguese) and driven to seek refuge among the rocks which are not lacking in the Maravi country.

Edouard Foà, a Frenchman who in 1891 and again in 1895 crossed the land of the Cewa, described the former prosperity of the people, living in large numbers in valleys where they cultivated land and bred cattle, and compared it to their miserable condition years later, after the arrival of the Mpeseni Ngoni.(1) By the time he travelled through the territory, the Azimba had had their villages destroyed and been enslaved and killed in thousands or driven to rocky and almost inaccessible hills.(2)

These people who, according to Foà's description, were living in such precarious conditions, had once terrorised European and African populations alike, inflicting heavy defeats on the Portuguese of Sena, Tete and Mozambique, and devastating and looting the extensive area which they occupied.(3)

(1) À travers l'Afrique Centrale, Du Cap au Lac Nyassa, Paris, 1901, and La traversée de L'Afrique du Zambèze au Congo Français, 1900, Paris.
(2) The Ngoni crossed the Luangwa river in 1865 (Barnes, 'The Ft. Jameson Ngoni'), entering the country which is at present the Ft. Jameson district of Zambia. Incursions of the Ngoni into their neighbours' countries must therefore have taken place at a later date.
(3) See ante, pp. 26, 27. The Azimba had, until recent years, a reputation for anthropophagy.

Family and Social Organisation[1]

Authors like T. Cullen - Young, M.G. Marwick and J. Bruwer, and to some extent also Rangeley, have carefully studied the social and family organisation of the Cewa. There is no need to repeat their findings and I shall only add a few comments of my own.

The Cewa are generally considered a matrilineal people. The particular relevance of the matrilineage in one's life, as compared to that of the patrilineage (scattered in space and holding little authority) almost certainly suffices to justify the term 'matrilineal'. It is less certain that other features, common in matrilineal societies, are also present among the Cewa of Macanga and Marávia. Inheritance of property is one such feature, acquisition of clan names is another. The Cewa of Furancungo inherit from their fathers (unlike those of Marávia (Vila Vasco da Gama) who inherit from their mother's brother), undoubtedly as a result of contact with the patrilineal Nhungue from Tete who live in large numbers in Furancungo.[2] Again it is disturbing that both in Macanga and Marávia no questions are likely to cause as much disagreement among informants as those in which the meaning of words expressing kinship ties - ciongo, mtundu, pfuko, mbumba - is asked.[3]

(1) For notes on the political organisation of the Cewa and the recognition by the Portuguese Government of traditional authorities, see Appendix F.
(2) They are mostly domestic servants and can be found almost anywhere in the district where there are Europeans.
(3) My informants in V.V. Gama stated that great confusion has been created in this matter by the Nsenga who choose either the mother's name or the father's name, depending on which happens to be more illustrious. A man will also do the same thing if he wants to marry a girl of the same ciongo; although former prohibitions are breaking down, some prefer to avoid criticism by changing their names.

Although anthropologists have recognised that systems in which descent can be said to be purely unilineal are very rare, or even non-existent, yet one wonders how many features a matrilineal system can lose and still be called matrilineal.

As elsewhere, the Cewa of Macanga and Marávia are uxorilocal. A man cannot as of right take his wife from his in-laws homestead without their permission and even when allowed to do so usually settles at some distance of his wife's relatives and does not take her to his own people. Villages tend to be small, as internal conflicts tend to disrupt them along certain lines, and are constituted by a core of several segments of matrilineages (more seldom, only one segment of a matrilineage) of the depth of two or three generations, with the addition of affines and a few isolated elements.(1)

The Cewa do not pay bride-wealth - which seems invariably to carry with it the right of the man to take his wife with him - but only nsambo(2) which has no intrinsic value.

The Cewa of Macanga and Marávia are polygynous, except for a very small minority of young Christianized men. The first wife is called matsanu, the second m'phala. A third or a fourth wife has no special name and may even be referred to as mapoto (concubine); a man's family often ignores them and pretends not to know that the man has married again. The status of the first wife is much higher; she keeps any valuable property her husband may own and is the only widow to be inherited by the deceased's nephew. Her children are specially loved. Only in the case of the first wife is nsambo handed over to her family by the women of the man's matrilineage. Permission by the first wife is necessary if a man wants to

(1) M.G. Marwick, op.cit. p.11.
(2) Traditionally a ring made of beads. Cloths and house utensils are also given but they are not considered important, in spite of their cost at shops. Nsambo is not worn but is kept by the woman's malume (mother's brother). The woman also gives a similar nsambo to her husband. On divorce each is returned to the party who gave it.

re-marry.(1) In spite of the fact that the first wife has a much higher status than subsequent wives, the amount of time and help her husband gives her should not exceed that given to other wives.

Women who have no younger sisters(2) to take their place do not normally leave their parents' home during the latter's lifetime. If a woman does go with her husband , the man has to give a small present, tacumbira (5s. or a hoe are a common payment, but 6d. may also be given), to serve as evidence that he asked for permission to take away his wife.(3)

Much has been written on the instability of Cewa marriages. The amount of protection that women get from their families and especially their ankhoswe, the restricted domestic authority of the husband(4) as compared to the warden of his wife and children, his position of stranger to his wife's group, and non-payment of bride-price (which creates a net of interests around the marriage that tends to prevent its dissolution)-

(1) The first wife is the proper person to take nsambo to the prospective second wife; but she will have nothing to do with her husband's subsequent marriages (except that her consent is required). The second wife is supposed to do for the third wife what the first did for her but if a woman refuses to do so a man may ask a friend or a relative to take nsambo to the new wife.

(2) The youngest daughter of a couple - cicigabera - is said to be the 'last strength' of her parents. Her children are particularly favoured. Her husband is treated differently from other sons-in-law and is called camwali (friend); he is under no obligation to avoid his parents-in-law, although 'out of respect' he too does not eat with them.

(3) Should a women for whom tacumbira was given become ill or die, away from her family, no responsibility can be placed on her husband: he asked for permission to take her and there is documentary evidence of that fact. Informants insist that tacumbira is not a payment, i.e. does not entitle a man to take his wife; a man must always 'ask permission'.

(4) A man is said to be no more than the shepherd (nyakabusa) of his children. They do not belong to him. As a shepherd he has duties but his children's duties are towards their mother's brother (malume), not towards him. Young men will help their malume with, e.g. payment of tax, but will not do the same for their father.

all these factors co-operate in making marriages unstable.(1)

This has worried administrative officers working in Cewa areas. An energetic officer in 1945 considered it necessary 'to attack and demolish the undeveloped and nefarious organisation of the Cewa or Azimba family' and suggested that 'prizes should be given to those authorities who distinguish themselves in re-shaping customs, by forbidding marriages in which no lobolo was paid'.(2) As far as I know this zeal soon died out and the Portuguese administration did not in fact make such a nuisance of itself.

Land Law - a) Types of garden

Chronologically the first garden that a man or a woman may own is a cirimambeta, literally 'garden of a single person'. It is far more frequent for women than for men to have them, but they are by no means a constant of Cewa life and it is more common for unmarried people to help their parents in their gardens. Cirimambeta are small plots, given by one's parents and adjacent to theirs.

When a girl gets married, it sometimes happens that (if the cirimambeta was fertile), she and her husband will continue to cultivate it. The husband will then increase it by opening a contiguous portion of forest.(3)

(1) Sometimes a marriage lasts for less than a month. One of my informants had been divorced three times, in each case for less than a year. Divorce is sought mainly by women, often under the pressure of their matrilineages which may consider that the husband (who is under constant observation) does not adequately satisfy the various tests. If a man is away and sends no news or money, his wife will contact his brothers and will ask them to do something about it or to divorce her (by returning the nsambo to her). If they are unwilling to take the responsibility of doing this, the woman will address the chief who will give her a paper stating that she is mbeta (unmarried).
(2) Proposta para a distribuição do Fundo de Fomento, 1945, by the district commissioner of Macanga, p.6.
(3) A cirimambeta would not by itself provide enough food for a couple. It is also said to be against male dignity to merely live on one's wife's land.

When a Cewa man marries, he and his wife stay for an indefinite period of time with his parents-in-law (commonly they will stay until a younger sister of the woman gets married and takes her place). The dependence of the couple is complete. The woman is not allowed to cook for her husband and merely helps her mother and takes to her husband the food that has been prepared; she has no grain stores of her own nor has she any kitchen utensils. The husband is even more dependent on his in-laws, obliged to avoid his wife's parents on all occasions and to work for them;(1) he is generally under close observation(2) - whether he is a good worker, whether he treats and clothes his wife well and, above all, whether he produces children.(3)

During this period a man has no rights whatever in regard to his in-laws' gardens or their product; he does not decide what is being planted or when nor what is to be done with the crop.

While the garden remains a cirimambeta, i.e. while it belongs to a single girl, in case of her death it reverts to her family: to whoever may want to cultivate it. This succession to land takes place in exceptional cases only (as all succession to land is rare among the Cewa), those justified by unusual fertility of the soil. More often than not the land will be abandoned, but anyone wishing to cultivate it should ask the permission of the girl's parents.(4)

Again, if the garden had already been increased by the husband's labour, the plot may or may not be inherited but if it is, it will only be by the

(1) If the parents-in-law still have the strength to hoe, they will work side by side with him in their gardens,
(2) His wife's family is 'studying his heart', as informants put it. The purpose of his stay with his in-laws seems to be twofold: that he works for them and that he proves to be an acceptable husband.
(3) A woman's brothers will not mind clothing their sister if she is having children for them.
(4) This is not because rights over fallows are strong among the Cewa (they are not) but because a girl's land is continguous to that of her parents (see argument below).

woman's family, in spite of the fact that the man spent time and labour ~~in~~ enlarging it. The labour factor, which in areas of some shortage of land elsewhere in Africa is so important (or even decisive) in attributing rights to a man's lineage,appears in this case to be neutralised by the fact that a man's land is continguous to the land of his in-laws - and the presence at such close quarters of strangers to the group (the brothers of the deceased) would be inadmissible to the Cewa. Once again 'rights' over land are undeveloped and weigh less than considerations of a social kind: the unity and cohesion of the group.

Because a man who does not have his own garden is socially handicapped - as he has no possibility of entertaining his relatives and friends without depending on his in-laws ' hospitality - it is frequent for the newly married couple to prepare for themselves a small garden contiguous to that of her parents,(1) of which produce they are entirely free to dispose. This plot is given the name of cigunda.(2) It produces enough grain to enable the couple to fulfil their social obligations and provides some extra food for the couple; not only do they sow maize or other crops but they may also keep a few chickens and a grain store.(3)

These gardens, like the cirimambeta, can also be enlarged, if fertile, and become the main garden of a couple; if this is the case they cease to be called cigunda and are called minda, a general term for garden. Inheritance of a cigunda, if it takes place at all, follows the rules described for cirimambeta, i.e. they are taken over by the woman's family.

(1) Most couples own these gardens.
(2) Terms used for gardens or methods of cultivation repeat themselves from area to area with similar (but usually not quite the same) meaning.
(3) Kapetepete, much smaller than the usual nkokwe.

The term cigunda is also used in a different sense, and one with which we are already familiar. As in Angónia, some men (always a small minority),[1] like to be independent of their wives and have a plot of their own. This plot can either be in the man's own village or in the woman's village, depending on which place has the best land. These cigunda will be inherited, if at all, by a man's brothers if the land is situated in his village and by the wife's family if it is located in her village.

As a rule, after one or two years of marriage, a couple starts to express their wish to leave and cultivate their own garden. If the wife's parents are satisfied that the man is a good worker and a good husband and if, on the other hand, they have somebody else to help them (e.g. a younger daughter who is getting married), they agree to the request.[2] The husband will then take his wife, not to his own village, but to another part of his in-laws' village and will cultivate a garden which may be a few hundred yards or a mile or two away from theirs. Man and wife will still help her parents once their own work is finished, but this is said to be out of 'good heart', and not a legal obligation.

Only in very exceptional cases - if the man is emigrating or is engaged in a labour contract (and by no means in all such cases) - may he ask permission to take his wife with him (citengwa marriage). The husband stays for some time with his in-laws even in this type of marriage. Informants state that if a man made clear his intention to take his wife with him immediately after the wedding, the latter would probably never be allowed to take place.

(1) Men find it a hardship to do the extra work involved.
(2) They will appreciate the fact that their son-in-law has obligations which he must fulfil - e.g. paying his tax - and that it is necessary that he should have some income of his own. Besides, if the young couple have their own gardens, they will be in a better position to help in years of bad harvests. If, however, the woman is the only daughter, or the youngest, or if her mother is a widow, the couple will feel compelled to stay indefinitely.

The independent gardens of husband and wife have no particular name other than that of minda (sing. munda). They are plots opened by the man, or enlargened by him, and this factor is relevant to inheritance - not inheritance of land, which hardly ever takes place in any case, but inheritance of crops and fruits.

As in Angónia, a few gardens are larger than average and belong either to men with many dependents who cultivate the land or to relatively rich men who promote working parties and give food or drink in exchange. These gardens are called zunde in Macanga and Marávia and present no particular legal features. In chiefdom Chofombo, which is one of the very few relatively developed areas, payment is of the kind asked for by the worker: money for taxes, a shirt or a blanket. The worker states his needs and the farmer allots the work accordingly.

In the past there were also the minda ya ciweta,(1) the gardens of the chief. Their purpose has already been discussed à propos Angónia and need not be repeated here, since the function they served (both to the chief and to his people) did not vary from place to place. Chinsinga, the 'chief of Macanga' is remembered as one who called villagers to do a few days work in his fields every year.

Dimba gardens, the last type of garden I would like to refer to, are even more rare in Marávia than in Angónia. They are seldom to be found in the whole large area of Macanga and Marávia(2). In Chiputo(3) (circunscrição of Marávia), the heart of Azimbaland,(4) they are practically non-existent: in the various villages around the post, only three men own dimba gardens. There are no markets in the area and no consumers,

(1) Informants did not agree that the expression used by W.H. Rangeley, 'Notes on Cewa tribal law', Nyasaland Journal, 1948,I, 3, means what it is supposed to mean, but they were aware of the existence, in the past, of the 'gardens of the chief'.
(2) They are very common along the Zambezi river, in a region not inhabited by the Cewa.
(3) Vila Vasco da Gama.
(4) Of the 4,010 Cewa of the circunscrição of Marávia 3,293 (1963 census) live in the administrative post of V.V. Gama. Other peoples of the post are : the Pimbe, the Dema, the Nhunguè and the Nsenga.

other than the administrative post.

In Marávia dimba gardens are only common in the chiefdom of Cantengo;[1] vegetables are sold for Fingoè, the administrative headquarters, mainly for the troops which now constitute the overwhelming majority of the European population in the area. In Macanga only a few among the many thousand of Cewa[2] who inhabit the district own dimba gardens.

If these gardens were more common, one could perhaps make an interesting study of the rights held over them because they present some unusual features. When they are 'men's gardens' - opened and cultivated by men - men's rights are undisputable and no conflict of interests arises. But if a garden is cultivated by a woman after her husband has spent an unusual amount of effort starting it,[3] the position is difficult to predict, the more so if the land is situated in the woman's village. Is day-to-day labour to count for more or for less than initial work?

Rights over land

I shall use this sub-chapter for the purpose of establishing a few comparisons with the Ngoni and putting forward some comments, since the bare facts of Cewa land tenure can be summarised in only a few sentences. Rights over land last as long as land is cultivated but some 'right of preference' remains the prerogative of an ex-owner. Land is

(1) Inhabited mainly by Nsenga.
(2) 46,657, according to the 1940 census.
(3) What makes the position of these gardens a special one is the fact that they involve initial extra work, both in fencing and in making furrows for the water.

Land is hardly ever inherited, it is not sold, pledged or rented and is not lent (but given away). Husband and wife share in the product according to the amount of work put in the garden, and inheritance of crops mortis causa follows the same principle. This outline and what I have written elsewhere should suffice for purposes of comparison.

In Angónia a man owns a proper plot of land for the first time when he gets married. This land he receives either from his father (if he has land available) or through his father (if the latter borrowed it for him). In Maraviland, on the other hand, a married man opens his own land as a man's parents-in-law do not provide him or his wife with any amount of land. While he is living with his in-laws a man cultivates their plot (and often too an insignificant cigunda); once he has been allowed to depart with his wife he cultivates a plot which he himself has chosen and opened. One would thus expect - and I regret that I did not investigate this point at the time - that a man's lineage in Angónia (in this case a patrilineage) has more rights(1) with regard to the land a man received at the time of his marriage than the lineages of Macanga-Maravia (matrilineages) in regard to the land of a married daughter and her husband. Hence a man would be more free vis-à-vis his wife's lineage among the Cewa than he is vis-à-vis his own among the Ngoni.

Again, one of the important modes of acquisition of land in Angónia is by inheritance and I made a distinction, which I consider important, between land which has been inherited and land which has not: a man's power of alienating the land he has inherited from his ancestors is strictly limited (contrary to what happens in the case of other land) by the obligation to consult certain members of his patrilineage.

In Macanga and Maravia things are quite different. The land of one's parents is usually abandoned. In one occasion, out of three elderly informants, only two knew of two people who had inherited their parents'

(1) If no other, at least a right of preference in all intended alienations, as in the case of inherited land.

land, the third one (a village headman) knew of no one. On another occasion, out of eight Cewa men, no one had inherited land. The position of women is hardly different from that of men since all they cultivate up to the time of their marriage are unimportant plots, given by their parents, and their parents' gardens.

Not even dimba gardens, which are more fertile, are inherited as a rule. In the rare cases in which succession to land does take place, it is for no more than one generation. Again, since land left by a deceased person has so little appeal to his heirs, one would expect the relative who occupies it to be entirely free from any form of lineage control (such control being exercised only when, as in the case of Angónia, land is the object of converging interests). This is in fact what happens in Macanga and Marávia: it makes no difference whether land has been opened by a man or inherited by him, he is entirely free to lend it or give it away.

As to loans of land, these are less common in Macanga and Marávia than in Angónia but they do take place, e.g. in the case of strangers who merely want to occupy the land temporarily,(1) or of men who return from their labour contracts too late to open a new garden, or of men who are just unwilling to spend much effort. The one special feature about land loans in Macanga and Marávia is that land is never claimed back; one should in fact speak of donations of land rather than of loans. Unless provision has been made to the contrary, the lender loses his rights over any trees which may be standing on the land.(2)

All I have been saying leads me to my last and controversial statement that the Azimba-Cewa man has with regard to the land he occupies

(1)A stranger will be told to speak to so-and-so who has land which is not being cultivated.
(2)Not because the trees are considered part of the land but because 'it is the borrower who is looking after them' (once more, labour creates rights).

individual rights which are more absolute than is the case with the Ngoni, and that this is so whether his land has been inherited (because there were no other claims upon it), donated to him (because the gift was outright and not a mere loan) or acquired at the time of his marriage (because he did not receive it from the lineage).

This appears to be the opposite of the current opinion which has it that the rights of Cewa men to the land they cultivate are precarious. It is true that marriages among the Cewa are unstable and that in the case of divorce the man almost invariably leaves his wife's village - but while he is living there a man has full rights over the land he occupies.

The second point I would like to raise concerns the rights of women to land in matrilineal societies. Surprise has sometimes been shown, inter alia by C.M.N. White[1], at the fact that the position of women with regard to the land they cultivate with their husbands presents very little variation, whether societies are matrilineal and uxorilocal or patrilineal and virilocal. In either case women have some power in disposing of the produce of the land but they never appear to have an absolute say in, for example, the alienation of the land itself.

Perhaps the first comment to make on these remarks is that, in societies in which marriage is uxorilocal, land is in fact situated in the woman's village but is in no sense the woman's land. In all cases it is the husband who opens up the land, which he does not receive as a donation from his father-in-law (let alone his wife). Secondly, where land is abundant it has no value until the moment when a crop of some sort is planted; it is the cultivation, the exertion of a man's effort to the soil which is the turning point beyond which land starts to have a value.

(1) 'A survey of African land tenure in Northern Rhodesia' - Journal of African Administration, 1959, II, 4.

Such transformation is operated by the man, not by the woman. Mr. White, in my view, bases his arguments on premises which are completely untrue - firstly that land, dry and hard or covered with grass or forest, has some value in itself and, secondly, that the wife of an uxorilical marriage enters the marriage with the initial advantage of being in some way the owner of the land. Even if she were the owner, her property is of no value.

It should be noted that among the Cewa of Mozambique, if land itself is seldom inherited, its product, on the other hand, is divided according to rules which are quite definite. If a man dies, his brothers are entitled to ask for half the product of that land which he occupied with his wife; the remaining half is taken by the widow and children. The half which is the share of the deceased's brothers is totally consumed in the funeral ceremonies: grain is either consumed directly or, if there are large quantities of it, it is partly exchanged for meat for the feast. I omitted to investigate whether this division of products of the land between the deceased's patrilineage and his widow and children is repeated in the case of all his wives but I suspect that it only takes place with regard to one's first wife.(1)

The main point about partition mortis causa of agricultural produce is the distinct treatment given by Cewa law to a man's garden and to a married couple's garden. I have discussed the latter and said that crops

(1) Succession to the personal property of the deceased (whose main heir is his nephew) only affects those goods - the more numerous and the more valuable - which at the time of death are to be found in the house of the deceased's first wife. It is also to be noted that only the big wife is to be inherited (should she be willing), while other wives automatically become free. There are thus several indications to the effect that the first wife and her property are specially important in the law of succession.

are divided between the deceased's brothers and his widow. This is not so in the case of those gardens - cigunda - which a man cultivated by himself. Here the widow is not entitled (because she did not share in the work) to any portion either of crops already harvested or of crops still in the land or fruits in the trees. In this case a dead man's brothers are the only heirs to all products of the land.

This is interesting in so far as it points to the fact that succession to property follows two sets of independent principles. On the one hand a man's heir is his nephew: the latter inherits the deceased's personal property, money (if any) and assumes the status familiae, rights and obligations, of the deceased. On the other hand, the produce of the land - if not the land itself - of a de cujus devolves (when no obligation exists of giving a widow that which in fact she earned by her labour) to a man's brothers. This balancing of interests might perhaps be investigated further by students of Cewa law.

As to the land itself, the nephew is the heir in those cases in which he marries the widow. Otherwise land is just abandoned or taken up by whoever wants to occupy it and one is therefore not in the position to say what the law of succession to land is.

Although land is often abandoned, yet a man keeps the right, which he does not normally use, of returning to it whenever he wants. In this I found no difference between the position in Angónia and that of Macanga-Marávia, except that in the former area the fact that land cannot be used without formal permission of its previous owner often makes for bitter feelings; but in both areas it is said (though in Macanga-Marávia people often deviate from this rule) that a man ought to consult the previous owner if he wants to cultivate a certain plot.

In Macanga and Marávia, more important than land itself are the trees which stand on it. Fruits of fruit-trees on abandoned land should be collected only by its previous occupier, unless he has made it plain

that he does not care for them (for example he has let the grass grow high, with the risk that the trees will be burned by bush fires).

It is doubtful whether the civil law category of rights known as jura in re aliena can be said to find an equivalent in customary law. Jura in re aliena are present whenever a certain object over which X has the right of ownership is also the object of minor rights by persons other than X . Can one say that a landowner under customary law owns everything which is on or under his land? It appears that this is not the case and that 'land' means land stricto sensu and that wild trees, water etc. are not comprised in the right of the owner of the land. This being so the right of the landowner is in fact not limited by other rights for the simple reason that the sphere of his rights and the sphere of other people's rights do not overlap. The rights of using trees, water, etc. are thus no minor rights - since no major right upon them exists - but rights which are limited only by the fact that they have to be enjoyed jointly, all villagers, (and perhaps strangers too), having an equal right to such products.(1) On the other hand, fruit-trees planted by a man belong to him, not because they stand on his land but because he planted them; their fruits cannot be picked up without his permission.

To conclude, two remarks may be made. The first is that if it is true that the right to one's land (a right which does not appear to suffer any restrictions and which therefore I do not hesitate in calling

(1) Although anyone can collect water or wild fruits from another person's garden, one should not give rise to the suspicion that one's purpose might be illicit: one should take the shortest way to the tree or stream, and not wander about.

a right of ownership) only lasts for a few years among the Cewa (as they practice a system of shifting agriculture), it is also true that such former right of ownership never becomes completely extinguished. It dwindles to no more than what one might call a 'right of preference', but it is still important enough to cause informants to hold strong views on the matter.

In the second place, the Cewa illustrate the point made by some authors (inter alia H. Clarke)[1] that, where land is abundant, it is the crops and the trees on it that matter and give a value to land. As Clarke notes, European jurists are used to considering trees as appendices of the soil, whereas in less evolved societies the opposite is the true state of affairs.

Agriculture - The Cewa of Macanga and Marávia practise a system of shifting cultivation. The exuberance or otherwise of the spontaneous vegetation is taken as an indication of the fertility of the soil and plots are chosen on that basis. The Cewa plant in the ashes of burnt grass and fellen trees and shrubs for two or three years, unless the soil is exceptionally fertile, in which case they may use it for as long as ten or more years.

By far the most common pattern in Azimbaland is to cultivate a garden for a few years and abandon it altogether once it ceases to yield. But when land is fertile - mainly if there are fruit-trees on it - ex-owners often go back to old gardens some years later. Other cultivators, these a minority, cultivate in rotation a number of plots contiguous to each other. A cultivator maintains his rights over these plots while they are

(1) 'The right of property on the land of another, as an ancient institution' - Journal of the Anthropological Institute, 19, 1889, pp. 199-210.

lying fallow; understandably, rights over fallows are stronger when the plots are contiguous to the land a man is cultivating, than when they are not. In the latter case, although permission ought in theory be asked by anyone wishing to cultivate an 'abandoned' plot of land, this is sometimes not done.

The question of whether land is reserved for a man while he is away hardly arises. The most common situation will be that his village and that of his wife have in the meantime moved to new places. Many reasons lead the Azimba to change their site of residence, either individually or in whole villages: land may be exhausted in the neighbourhood of their village, or someone may have started a garden in a new place which is proving suitable, or successive deaths may lead villagers to believe that their present place is unfavourable to them, etc - not to mention the fact that the Azimba prefer to have as little contact with the Administration as possible.(1)

The methods of cultivation of the Cewa are more rudimentary than those of the Ngoni. Broad ridges stuffed with grass are not unknown, but by far the most common way of cultivating is in calosera (a modern development, I am told(2)), a simplified version of ridges incorporating burnt grass (or the ashes of fellen trees, if the garden is being cultivated for the first time). Caloseras are about ten inches wide and five inches high. Some informants suggested that broad ridges (mtumbila) are

(1) In Vila Vasco da Gama (Chiputo), after last year's census, all villages on the left shore of the river Mucumbuzi immediately moved into its right shore.
(2) It has been practised for the last twelve years or so.

considered more effective but require harder work. Whatever system is used, the crops planted are the same: maize and, after a couple of months, beans (close to the maize); sometimes peanuts or potatoes are inter-planted. Sweet potatoes are usually planted in mtumbila so that their long roots do not reach the hard soil. Cassava is either planted around a garden to limit it, or in a separate plot or in the furrows between the calosera.

The only form of rotation practised by Azimba farmers is the exchange each year between the place of the furrows and that of the calosera; but the same crop is planted on top of the calosera, year after year. Some cultivators make mtumbila in the first year and calosera afterwards, or always one or always the other.

For reasons already mentioned, Africans in Macanga and Maravia own practically no cattle, except in the chiefdoms of Cachombo and Chofombo in Maravia where the majority of people (of the Nsenga tribe) own cattle and at least half of them use ploughs;[1] as a consequence, their gardens are about two or three times as big as those held by the Cewa.

Powers of village headmen with regard to land - Broadly speaking, the powers of African authorities with regard to land are widest when there is a variety of legal situations arising from possession or ownership of land. Only then will they be called to solve disputes which have their main source in the legal mobility of land - in the fact that land is sold, pledged, inherited, lent, etc. It is hardly necessary at this stage to say that land among the Azimba of Portuguese East Africa is never

(1) The Nsenga live in border areas and have become acquainted with ploughs in their frequent visits to neighbouring territories of Mozambique where they sell their products and acquire clothes, bicycles, ploughs, etc. (Report by the district commissioner of Maravia, 1962, p.13).

sold nor pledged. As to succession to land, the question is one of fact rather than of law (land being taken by whoever, if anyone, happens to be interested in it). Loans (or, more exactly, gifts) of land are a matter for the lender and the borrower to agree upon and do not concern the village headman. Similarly, if land appears to have been abandoned, the new farmer is only under the obligation (not always fulfilled) to ask permission from its ex-owner.

Litigation on land matters can be said to be non-existent. One informant, who had been a chief for four years, had never had to solve a land dispute. If any incident arises, it is that of trespass of an animal into another person's land, or a theft of wood or produce. Only among chiefs an argument sometimes starts because persons who are registered with one chief whom they like are cultivating gardens in the area of another chief because the land is more fertile there.(1)

A nyakwawa does not have in Macanga and Maravia the role which he performs in Angónia of protecting existing rights, because these are too tenuous to need protection. In Angónia the relative scarcity of land makes a certain amount of control necessary; here occupation of land takes place with complete freedom on the part of its native inhabitants. It is not necessary, as in Angónia, to inform the local authority that such and such a plot of land has been chosen for cultivation. The Azimba is in this respect completely free: he neither asks permission nor informs, and simply proceeds to occupy the land. His obligations are only towards his co-villagers. He should find out whether the plot he intends to cultivate was previously occupied and has been definitely abandoned. If there are neighbours he ought to find out their views on the planned occupation.

(1) The latter chief sometimes requires people cultivating in his area to be registered with him - because chiefs receive a percentage of each tax they collect.

As elsewhere, a stranger is not in the same position as local people and ought to ask for formal permission to reside in the village. This has already been discussed and need not be repeated here, since it presents no particular features.

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CHAPTER XIV

THE YAO

Their habitat - The overwhelming majority of the Yao people in Portuguese territory are to be found in the circunscrição of Vila Cabral, which is part of the province of Niassa.

This province comprised until recent years the area stretching from lake Nyasa to the Indian Ocean and from the Rovuma river in the north to the Lúrio river in the south. This vast territory, divided into military regions in the first years of Portuguese occupation,(1) was from 1891 to 1929 administered by the Companhia do Niassa, one of the chartered companies to which reference has already been made.(2) The eastern half of this area became in 1929 the separate province of Cabo Delgado and both provinces (Niassa and Cabo Delgado) have since been administered directly by the state. It is with the present Niassa province, and more specifically its circunscrição of Vila Cabral,(3) that this study will be concerned.

The province has an area of 119,720 sq.kms - about 15,4% of the total area of Mozambique - and comprises eight circunscrições among which that of Vila Cabral(4) where administrative headquarters are settled. In 1953 the total population of the province was about 273,000 inhabitants, of which about 1,000 were non-Africans - an average population of 2.2 inhabitants/sq.km. The main tribes are the Yao, the Makua and the Nyanja.

(1) Capitanias and comandos militares.
(2) See ante, pp. 155, 163.
(3) See maps on pp. 156, 198.
(4) For the last four or five years Vila Cabral has in fact been a concelho and not a circunscrição - that is, it has been considered sufficiently developed to have the same designation and organisation as some administrative divisions in Portugal.

The whole province is underdeveloped. Means of communication in the North of the colony are, as discussed elsewhere(1), most inadequate and Niassa is no exception to this rule. Not even the town of Vila Cabral, the headquarters of the area - where a Provincial Commissioner resides - is served by a railway. The only existing rail line in the province connects Nacala in the coast to Nova Freixo (circunscrição of Amaramba), 305 kilometers away from the town of Vila Cabral. The two localities are linked by a road(2), but road transport is expensive and unsatisfactory and has been described as one of the 'cancers' of the area. At the moment only the circunscrição of Amaramba in the south of the province is served by the railway mentioned and this fact accounts for the development of Amaramba as compared to other circunscrições in Niassa. The connection of the existing line in Nova Freixo to the post of Catur and eventually to Lake Nyasa(3) has been planned for years but so far has not been put into execution; the scheme will not help northern areas, either.

Although in the plateau of Vila Cabral the climate is one of the best in the colony (average maximum temperature 23°C; average minimum 13°C), there is little European occupation. In the whole of the Niassa province there were in 1953 only 576 Europeans (plus 126 Indians and 256 half-castes), a proportion of one European for every 473 Africans(4) or one European in each 207 sq.kms.

The province of Niassa, with its variety of natural conditions, provides good opportunities for the cultivation of a number of crops. Potatoes can best be cultivated in the high and cold lands of Vila Cabral; the low lands of Mecanhelas and Litunde and the valleys of the Lugenda and Rovuma

(1)See ante pp. 197, 231.
(2)There is a bus twice a week running between Nova Freixo and Vila Cabral.
(3)Since 1955 Portugal has had a share in the waters of Lake Nyasa, after a treaty was signed between her and Britain.
(4)The African population amounted at that time to 273,541.

rivers are best suited for cotton, and tobacco has successfully been grown on the shores of lake Nyasa and in Mandimba, Muembe and Litunde. Many European crops and fruit-trees find ideal conditions in the province and could be planted on a large scale. Maize and millet are the most common crops sown by Africans, who also plant potatoes, sweet potatoes, beans, peas and vegetables.

Cotton was for some time an important factor in promoting economic development. The circunscrição of Amaramba, which in 1960 was producing the biggest quantities of the crop , had over one half the shops in the whole province. Two concessionaires (1) operated in the area until 1961, when their concessions were revoked and they became mere traders in the produce, without actually interfering in its cultivation (2). In 1957 one of the firms produced 9,462,274 kgs. of cotton and the other 367,997 kgs.

Cultivation of potatoes would be, in the view of experts, a most profitable enterprise - and a better economic proposition for Africans than cotton - if only there were adequate transports. In the south of the colony the situation frequently arises when potatoes have to be imported; they are bought both from Angola and South Africa and it would obviously be to the advantage of the economy of Mozambique as well as to consumers that they should be acquired locally. But they have to be transported to Vila Cabral, from here to the railway in Nova Freixo (305 kms. away) and then to the south.

Tobacco, like cotton and potatoes, is in Niassa cultivated by Africans only. Local markets pay much lower prices than the market of Quelimane in the coast and it is common, even nowadays, for African cultivators to travel about 600 kms each away, either on foot or by bicycle, and take their crops to the coast.

(1) The Sociedade Algodoeira do Niassa and the Sociedade Agrícola Algodoeira.
(2) The privileges of the cotton concessionaires, were abolished in 1961 by Dr. Moreira's legislation, (see ante, p.130).

Approximately two-thirds of the total Yao population in Portuguese territory live in the circunscrição of Vila Cabral, mostly in the plateau of the same name. The circunscrição has an area of 40,000 sq.kms. and comprises four administrative posts. Its African population amounts to just over 80,000 (predominantly Yao - about 79,000 - but also Makua and Ngoni). In 1963 the non-African population in the four administrative posts amounted to 1,048 Europeans, 39 Indians, 224 half-castes and 200 assimilados. In the circunscrição of Marrupa, where 8,000 Yao and 58,000 Makua live, there were in 1963 only 83 Europeans.

In spite of the fertility of the land in the Vila Cabral plateau and the good climate prevailing over most of its area, in 1963 only five Europeans (four individuals and one society), all of them settled near Vila Cabral town, were engaged in farming;(1) most of the remainder Europeans had jobs with the Administration and a few were tradesmen.

Education of Africans has been, until the last couple of years, in charge of missions, but their numbers have been very inadequate. There are three Catholic missions in the whole area of the circunscrição (in Messangulo, Uango and Maúa) and two churches of the Universities' Mission to Central Africa (in Massenger and Chitambe). A common complaint among the administrative officers in the area is that the new government schools fail to attract students since Africans prefer the teaching of Moslem mwalimu.

There are no industries in the area and only a few small and unimportant mills.

The Vila Cabral plateau has been considered excellent for stock breeding but most other areas in the circunscrição are still tsetse infested and the overall numbers of stock are very low.(2)

(1) In one administrative report it is said that these farmers lack economic resources indispensable in the circumstances.
(2) In 1963, Europeans in the four administrative posts owned only 1654 head of cattle, Africans 243 and half-castes 21; Europeans owned 585 pigs and no African owned them; Europeans kept 351 goats, Africans 4671 and half-castes 86; Europeans owned 203 sheep and Africans 3709 (Report by the District Commissioner of Vila Cabral, 1963).

Africans fish in Lake Nyasa and rivers and use the fish to eat, to barter and for sale in Niassa, as well as in border areas of Malawi. In 1963 only one European fished in Lake Nyasa but his methods were primitive[1]. Vila Cabral, at the distance of only 50 kms of Mponda on the lake is not provided with fish from the lake and receives its insufficient supplies twice a week by plane from the south. Inadequacy of transport has a share of responsibility in this state of affairs but lack of initiative is surely the main cause[2].

Not only is transport inadequate in Niassa but in fact all means of communication but the most primitive were until recently non-existent. As late as 1946 the town of Vila Cabral (capital of a province) was not connected by telephone to either the posts of Catur or Muembe, only a hundred kilometers away. To remedy this, it was suggested in one administrative report (apparently in all seriousness) that carrier pidgeons be used.[3]

Lack of transport and low density of African population account for low density of commercial occupation, which in turn is a cause for African emigration. In 1954 Africans of the chiefdoms of Mataka and Metarika of the administrative post of Muembe had their nearest shops at the distances of, respectively, 135 and 193 kms.[4] Far from Muembe, in Marrupa, the district commissioner stated in 1963 that north of the Lugenda river there was no commercial occupation <u>at all</u> and that the Administration had to put up with the frequent visits of Africans to Tanganyika[5].

(1) One administrative officer in his annual report comments that the British in Nyasaland made thousands of pounds with the export of fish, whereas the Portuguese on seeing the lake merely exclaim: 'How beautiful!'
(2) Mponda is connected by road to Vila Cabral. Although it is far from being a good road, the short distance between the two places can be made easily.
(3) <u>Report by the D.C. of V. Cabral</u>, 1946.
(4) <u>Report by the D.C. of V. Cabral</u>, 1954.
(5) <u>Report by the D.C. of Marrupa</u>, 1963.

As elsewhere in Mozambique, emigration has been a favourite solution for this and other difficulties.[1] In posts north of the Lugenda river density of population does not exceed 0,3 inhabitants/sq. km.[2] and even in the area of Vila Cabral it is as low as 2.[3] Some Africans found it to their advantage to live in Nyasaland while coming to Mozambique to hunt, fish and even make gardens; a few went as far as paying taxes in both territories.[4] It is thus not surprising that Africans often speak English, while not knowing a word of Portuguese, as noted by the administrative officer of Catur in his 1955 report. A report on Litunde, on the other hand, considered emigration 'the main factor upsetting the social and economic life of the post' and added that many villages 'have no men for months on end'.[5]

The people - Briefly, the history of the Yao is that of the expansion, by the middle of last century, of a people hitherto settled in Portuguese territory (in what is now the administrative post of Muembe) into a large area around lake Nyasa. A missionary writing in 1894 estimates their numbers at about 40,000 or 50,000 before they were scattered around.[6] Rangeley describes them as peaceful traders and great travellers up to the time when they were forced by a foreign invasion to leave their country.[7]

(1) Chief Catur is mentioned in one administrative report as one of several chiefs who left for Nyasaland, taking with him many subjects.
(2) Report by the D.C. of Marrupa, 1962.
(3) Report by the D.C. of Vila Cabral, 1960.
(4) Report by the D.C. of Vila Cabral, 1954. A similar situation prevailed in Macanga-Maráwia (see ante, p. 229).
(5) Report by the D.O. of Litunde, 1943.
(6) Os ajauas - notas enviadas ao Bispo de Himéria, Father P.Dupeyron, 1894, unpubl.
(7) Some authors refer to the invaders as Alolo (W.H.J.Rangeley), others as Makua (G.M.Sanderson); Father Dupeyron thought of them as Ngoni (op. cit).

From then on, scattered in many directions, the Yao became a conquering people, dominating local tribes and engaging in slave raids.(1) In some cases they successfully invoked ties of kinship with local chiefs and settled peacefully in the Nyanja country, in other instances conquest by force of arms took place.(2) Some Yao moved into Tanganyika in separate groups at different times, others settled in Nyasaland where they carried out their private wars, others still crossed the lake and settled down in its western shores and further inland. They took many different names and became known by designations which were mostly derived from hills (Amangoce) or other geographical accidents, but also from clan names (Apiri), names of chiefs (Aninamataka), (Acinamakanjira), particular skills (Acisi - the smiths) or any other special features of the group.(3)

Father Dupeyron(4) states that after the dispersal of the Yao by the middle of ~~the~~ last century, some groups remained in their traditional home in Mt. Cao, the main such group being the Amasininga whose chief was Makanjira. According to informants, the majority of the Amasaninga still live around their traditional home, although many have left for Tanzania, some are to be found in Vila Cabral and a group has settled in Malawi, near the border, in Makanjira chiefdom.(5) The Acisi, or blacksmiths, were said by informants to live in Vila Cabral area, where the places in which they worked are still remembered. The Amacinga can be found in Malawi, mixed with the Amangoce; in Portuguese territory the former are

(1) W.H.J.Rangeley - 'The Ayao', Nyasaland Journal, XVI, 1, Jan., 1963, p.12.
(2) H.S. Stannus, 'the Wayao of Nyasaland', Harvard African Studies, III, 1922, p.232.
(3) E.g. the Acicimbala (the fat ones), the Gongomeala (those who live on the stones, the Acinyau (those who hunt with nets), etc. (Information given by elders in Vila Cabral).
(4) The priest's notes are the only written source on the Yao of Mozambique. This chapter is therefore based on these notes, on the extensive writings of J.C. Mitchell and W.H. Rangeley (and also G.M. Sanderson, Duff MacDonald and Livingstone), dealing almost exclusively with the Yao of Malawi, and on oral information obtained during some six weeks of field work in the area.
(5) Prof. Mitchell too describes the Amasaninga of Malawi as inhabiting the area of native authority Makanjira.

to be found mainly in the post of Catur and also among various groups of Yao. These four groups subdivided into many others, some of which have alreayd been mentioned.

The Yao are known to have undergone considerable Arab influence. Rangeley describes how they came into contact with Arab traders who eventually settled in their country and married their women; Livingstone and other early writers noted that the Yao built rectangular houses and imitated the Arabs in every way. Mohamedan religion is widely practised by the Yao, although probably not deeply understood. From the contemporary account of Father Dupeyron it is evident that by the end of last century it was by no means as generally followed as it now is in Mozambique.

One also has the impression that in Portuguese territory Mohamedan religion is now far more widespread among the Yao than it is in Nyasaland.(1) Arab initiation ceremonies of jandu and nsondo have practically everywhere replaced the indigenous lupanda and ciputu - whereas in Nyasaland (even in places where Islam is most powerful) one can only speak of 'a tendency' for Islamic initiation ceremonies to displace their tribal equivalent.(2) Ramadan is also scrupulously observed among the Yao of Mozambique, even in urban Vila Cabral. In Muembe, the Yao homeland, I was told that all natives, in the area followed Islam, except for the three Europeanised Africans in the Post: the teacher, the nurse and the interpreter.

Dislike for government and missionary schools and preference for Muslim teaching is well-known to anyone who in Niassa lives in Yao areas. A map prepared by a district commissioner as part of his annual report illustrates

(1) In Nyasaland some Yao chiefdoms are predominantly Christian while in others Moslems predominate. Mary Tew, quoting Hetherwick, considered that Moslem Yaos around Ft. Johnston and Kotakota constitute one-ninth of the total population, compared to one-fifth in Zomba.
(2) J.C. Mitchell, The Yao village, Manchester, 1956, p.82.

this point. In 1963 there were in the four administrative posts of the circunscrição of Vila Cabral 3 Moslem bishops, 44 superior priests, 270 priests, 507 teaching priests (mwalimu), 119 mosques and 474 school-mosques. The number of students in Mohamedan schools in the same year, according to the report, was 7,430 male children between 7 and 14 years of age and 2,878 female children of the same age-group. If we recall that the circunscrição of Vila Cabral has a population of approximately 79,000 Yao, the figure of over 10,000 children between the ages of 7 and 14 who attend Mohamedan schools cannot fall far short, if it falls short at all, of the total number of children of that age. One can safely conclude that the Yao population of the district of Niassa is overwhelming Mohamedan and wants their children to be educated the same way.

It is a matter of conjecture whether the position would be different if there were schools - missionary or of the government - in sufficient numbers. But, as noted before, there are only three Catholic missions[1] and two Protestant churches in the area and teaching was until very recent years entrusted to the missions exclusively.

The Yao are mainly cultivators, owing very little stock. Some areas are tsetse infested but the circunscrição of Vila Cabral where 79,000 Yao live is mostly healthy and very suitable for stock breeding - yet numbers in this area are also low.

The Yao sell some of their crops, mostly maize, cotton and tobacco.[2] They have no difficulty in selling the first two crops which are acquired by either the government or private firms; but tobacco is sold sometimes

(1)One administrative report, dated 1954, considered teaching at the missions 'most deficient'.
(2)In 1963 the following quantities in Kgs were sold by Africans of the circunscrição: tobacco - 14,200 (value in escudos 213,000$); cotton of the first class - 545,532 (2,018,468$); cotton of the second class - 42,990 (98,877$); maize - 3,500,000 (2,800,000$)(Report by the D.C. of Vila Cabral, 1963).

at markets held locally (in which prices are low) or more often in Quelimane, in the coast[1], where about four or five times the prices of Niassa are paid.[2]

The Yao cultivate maize more than any other crop, but also beans, sorghum, peas, etc. In spite of the fact that it does not fetch high prices, maize is a favourite crop because it can be kept for months whereas potatoes - a crop which administrative officers used to favour - cannot. The cultivation of potatoes was eventually abandoned, which was the more regrettable because the plateau of Vila Cabral is known to have excellent natural conditions for the crop.

Agricultural assistance to Africans has always been practically non-existent, except for the firms concessionaires of cotton areas. Under the heading 'agricultural assistance', administrative reports only have to say that there is no expert in the area and that the activity of the district commissioner in this respect is limited to distributing seeds among Africans.[3] Cotton is now bought by a government body, the Instituto do Algodão at fixed prices. Cereals (maize and wheat) are also bought by another government body, the Instituto dos Cereais.[4]

Emigration into neighbouring territories has always been considerable and has diminished substantially only in the last couple of years. Some emigrants did return, after periods of absence which ranged from three months

(1) On one occasion when the district officer of Muembe visited the chiefdom of Mataka he found no men at all in the lands, because some were working in Tanganyika and others had not yet returned from the coast (Diário de Serviço by the district officer of Muembe, 1950).
(2) Prices vary but £1 for a wreath of tobacco weighing some 2 lbs. is a common price in Quelimane. A garden can produce 100 or 150 such wreaths per season.
(3) Inter alia in Replies to a questionnaire, by the D.C. of V.C., 1947.
(4) This Instituto does not appear to operate in all areas.

to three years. The official figures available for the circunscrição of Vila Cabral give a total figure of 5,801 clandestine emigrants in 1947 and 1,089 legal emigrants; in neither group were men normally accompanied by their wives.(1) As elsewhere in Mozambique, emigration was directly connected with general conditions described before, as well as with local shortage of employment.

Few administrative reports are available in Niassa province and these do not refer to recruitment for private companies operating outside the area. In Niassa itself there was very little demand on the part of individual farmers: in 1949 only three employed about 200 Africans during five months each year and in 1963 the number of European farmers in the circunscrição still did not exceed five. Demands for African labour thus came only from the government and the cotton concessionaires.(2)

(1) In 1949 of a total of 1,089 emigrants, only 63 were women. Emigration took place mostly to Nyasaland (499 men and 26 women) but also to the Rhodesias (362 men and 33 women), Tanganyika (127 men and 4 women) and South Africa (38 men) (Report by the district commissioner of Vila Cabral, 1949).

(2) Since these companies had the backing of the government, agriculturalists cultivating one hectare of cotton were held to have fulfilled the duty to work (see ante, p.227). If, however, they planted a smaller acreage, they were still liable to be called for other work. Africans universally resented the fact that they had to cultivate large plots of cotton which left them little time for their own crops; the benefit they derived was also minimal because cotton was underpaid (see below, p.283).

Family and social organisation[1] Villages tend to split up, as men relying on the support of their matrilineal dependents (their mbumba) move away and found new villages[2] - a process which has been analysed in detail by Prof. Mitchell. Small villages with only one matrilineage of the depth of two or three generations, or villages with a few matrilineages related or unrelated to that of the headman thus constitute a common pattern among the Yao.

Legally and socially the asyene mbumba - the 'warden of a sorority group'[3] - is a most important figure. No case in which a member of the mbumba is a party can be heard unless his asyene is present[4]. In fact, the chief notifies the asyene (and not the interested party) of the date when the case will be heard. If a member of the matrilineage is fined or has to pay compensation to a third person, the warden of the sorority group is the person who collects the amount required from other members of the group. He may also, if the amount is small, pay it himself - a right which no other member of the matrilineage has.[5] Again, when a man dies his property is claimed by his children,(who belong to his wife's lineage) and by his own lineage; the lineages' claims are put forward by their respective asyene mbumba who distribute the property between the members of

(1) In recent years Prof. J.C.Mitchell has in a number of works analysed the structure of Yao society in its various aspects with a thoroughness that makes further additions difficult. In the present chapter I am merely dealing with those social relationships which are of a particular relevance to any study of land law.
(2) Informants stressed that a headman has to be very careful in the way he deals with any head of a large mbumba or else the latter will leave the village, taking with him a considerable section of it. This, they suggested, is happening every day because traditional sanctions have ceased to operate.
(3) As Prof. Mitchell translates it.
(4) Even if the litigant or the accused is not young he still has to be accompanied by his asyene mbumba.
(5) The opposite would mean undue emancipation from the group and the warden's authority.

the mbumba in a way to be described later. The asyene mbumba not only represents the unity of the group but is instrumental to that unity.(1)

Informants say that, for fear of mystical sanctions, it is not the custom to remove the warden of a sorority group from his functions if his administration of the group affairs is unsatisfactory; nominally he will remain in office but the mbumba as a group will break down and each member will go his way. As described by Prof. Mitchell, the functions of the warden of a sorority group (the mother's brother of the women, their njomba(2) or akwelume) will in any case be gradually taken over by one of the women's brothers.

On the whole, Yao men marry uxorilocally, although cases of men taking their wives with them(particularly if they have tobacco gardens in their own villages)(3) are not unknown. The latter marriages have the name of cigigale and are the equivalent of the Cewa citengwa marriages described earlier.(4) These marriages are said not to have the support of the women's asyene mbumba whose own prestige and influence is related to the number of his dependents.

Both in uxorilocal marriages and in cigigale, the man stays for some time with his parents-in-law. He does not pay bride-wealth but only an insignificant salamu or abari(5) and is not entitled as of right to take his wife away.

(1) His role is expected to be one of conciliator - e.g. the marriage sureties (anamangoswe) to a given marriage may say that they are tired of it because it is too troublesome, in which case the asyene should give them a small present and ask them to be patient.
(2) I did not see this term being used by Prof. Mitchell. In Niassa it is far more common than that of akwelume, which in any case is only used when referring to a mother's brother and not when addressing him. Njomba can be used in either case and also as a general term of respect.
(3) See below p.284.
(4) See ante, p.247.
(5) Traditionally, a comb of wood made by the bridegroom.

Although hierarchy between a man's wives is not readily apparent (except in the case of chiefs and headmen), because women are not clustered together, the first wife in fact enjoys a much higher status than the others. When a man is ill he must be taken to his first wife's hut and he should die in no other place. During his lifetime she keeps his valuable possessions for him. On his death, although all his children appear to receive an equal share, in fact his children by his first wife get a larger portion.(1)

In matrilineal societies like the Yao's(2) a man's heir is said to be his nephew - his eldest sister's eldest son.(3) With regard to succession to office the position is not clear, there being considerable disagreement between authors. Stannus considers that a chief's heir is his nephew, while Duff MacDonald indicates that succession passes along the line of collateral brothers first, before dropping a generation to the sister's sons, but his evidence is contradictory. Prof. Mitchell's view is that there was probably a change from adelphic succession to a straight system of matrilineal primogeniture(4), the rule observed by MacDonald being the old rule while Stannus states the position as it now stands (and was observed by Prof. Mitchell in Nyasaland).(5)

(1) Law and practice do not appear to coincide. Informants stated that when a man feels he is going to die he tells his first wife to put aside a few things for their children; when partition takes place a few weeks after his death, such goods are not divided. On other occasions it is the man's ngoswe - in charge of evaluating the property of the deceased - who leaves out a few items whichhe later gives to the children by the first wife.
(2) Although matrilineal, some recognition is given to patrilineal ties. Both men and women use their own names and those of their fathers, connected by biti (daughter) or wadi (son). I was told that some time ago a dead child's uncle (its njomba)on its burial wanted the Moslem priest to refer to the child as the 'nephew of so-and-so', instead of 'son of so-and-so'; this was considered not possible and the child was only buried after its njomba had withdrawn his request and apologised.
(3) Customary law allows for the choice, as successor, of the most capable nephew even if he is not the eldest.
(4) Op.cit., p.157.
(5) I did not make a point of investigating this question but came across a case in the Litunde area which illustrates adelphic succession.

As to succession to a man's social status and private property, it is questionable also whether his nephew is nowadays his heir. In past times the deceased's nephew (a sister's son) usually married the deceased's widow;(1) whether this was levirate or widow-inheritance one important legal consequence followed, namely, no partition of the estate took place. The new husband 'stepped into the shoes' of the deceased and there is no doubt that he was the successor to his property as well as to his social status.

Nowadays widows are practically never inherited. If the deceased was a good husband, the widow's family usually recommends to her that she should marry another man of the same family, but this is about all. As to a man's property, it does not appear to be inherited by his nephew either. There are present-day instances of dying men having indicated that they wish all their property to be taken by their children, and no partition has taken place in such cases.(2)

If the deceased makes no will the procedure adopted is as follows: the anamangoswe (marriage sureties) and the asyene mbumba of both lineages (the deceased's and his wife's) divide the estate in two parts, leaving (at least nowadays) a much larger share of everything to the children.(3)

(1) Unless he had already married the deceased's daughter, his cross-cousin (marriage between cross-cousins was in the past very frequent but has now few supporters). Or the nephew might not want to marry the widow or she might be unwilling to be inherited. Again, if the marriage with the deceased was not a happy one, the woman's family would be reluctant to have her marry another man of the same family and would prefer to forgo the property.
(2) In one recent case a rich man died, having made the oral will that all his property should go to his children; this was done and no other claims were put forward. In another case the brothers of the deceased did not conform to the dead man's wishes and claimed a part of the estate; two of these men 'had already died and the third one was losing his reason'.
(3) The widow is left with whatever furniture and cooking utensils there were in her hut. If the deceased left money she will not inherit it but will only keep the share of her children (she will normally ask somebody else to keep it for her, but the money is handed over to her at the meeting called to proceed to partition of the estate). Daughters receive on an equal footing with their brothers and all children of the same mother receive equally, no preference being given to the eldest son. Married children of the deceased, both male and female, receive less than their unmarried siblings.

In fact a man's lineage now tends to claim only money and leave the remainder with the widow and children; when the deceased's lineage does exercise its rights, it takes a share of everything the dead man possessed: cattle, money, crops and personal property. These are taken by the deceased's ngoswe to his asyene mbumba who in turn divides it among ~~the~~ members of the group. It is this division which is relevant to the point I am making, since a man's nephew is not in a privileged position as far as partition of the estate goes. Informants say that the deceased's asyene mbumba is well-advised not to keep anything for himself, and also that he should distribute the deceased's property for as large a number of kin as possible, so that each person is entitled to only very little; no one (nephew included) should be given a larger share, or else he might be accused of having caused the death of his relative.

It seems therefore clear that at present a man's nephew is his successor only in so far as the process (which is a gradual one) of taking over the functions of warden of a sorority group is completed, but that he does not succeed to either the property of the deceased or to his widow[1], and probably not to his office either.[2] These facts are relevant to succession to land which mutatis mutandis follows the same pattern, as will be described.

Land law - This is more interesting in Niassa than in the other areas where I worked because a variety of situations is present in this district which makes comparisons and conclusions possible.

(1) Except in rare instances.
(2) These conclusions, as well as the facts which support them, are my own responsibility and do not derive from any of Prof. Mitchell's writings.

Abundance of land, or otherwise, for certain crops will be seen to be responsible for quite a wide range of legal situations. I shall first describe the position as I saw it in the area of Vila Cabral,[1] where only traditional crops are cultivated, and shall then move on to areas where cash crops (cotton and tobacco) have been instrumental in producing substantial changes in customary law.

Among the Yao of Vila Cabral, chronologically the first field that a man or a woman owns is known as megunda we uli, literally a 'garden of a single person'. These gardens have no economic significance, being small in size, and are not held by every unmarried person. It is far more common for a young man or woman to merely help his or her parents in the cultivation of their gardens.

A particular feature about these fields is that they are exempted from practices which have otherwise persisted to the present time among the Yao. Authors writing on the Ngoni refer to a 'ceremony of first fruits' (incwala) which is believed to have been part of former customs but which no longer takes place. Informants state that among the Mozambique Yao it was the custom that at the time of harvests, small quantities of maize were presented to the ancestral spirits;[2] a feast would then follow, with a common meal for the entire village. Not until these ceremonies (mirimbo) had taken place could a cultivator dispose of his crops. Nowadays gifts are no longer presented to the spirits but the feast and meal in common are still held and agricultural products are not consumed until then. Crops grown in gardens of young people, on the other hand, are exempted from all such restrictions and can be eaten at any time.

The small and unimportant garden of an umarried person is also known in Vila Cabral area by the name of katcicanda, kuandila or cakutawna. As is the case among the Cewa, this garden is sometimes increased (if the land

(1)Ichinga, as its African name is.
(2)A similar ceremony (incwala)was still held by the Ngoni in the last century (A. Werner, The native races of the British Empire Lond., 1906) but has now fallen into decay.

is fertile and also if there is the possibility of expanding it) by a woman's husband, thus becoming the couple's mgunda, or main plot. If the land is poor and the garden cannot be enlarged, it is abandoned or left for a younger sister of the woman or for her parents, the original donors.

The Yao in this area own several kinds of fields. I shall simply indicate their names and uses to which they are put because, as far as I could ascertain, this variety does not give rise to different legal situations.(1)

Streamside gardens in Vila Cabral are called, as elsewhere in Portuguese Yaoland, matimbe (sing. litimbe) and are cultivated during the dry season only. Gardens in the highlands have the name of mgunda ja lutano, and gardens situated half-way between the low and the high gardens are called mauazi (sing.liuazi). The principle is that one cultivates gardens 'of the top' (ja lutano) in the rainy season; when the soil starts to dry, one plants lower down until in the dry season one uses riverside gardens only. Matimbe are most popular in this area and it can be said that everyone owns them; so are mgunda ja lutano equally popular, whereas mauazi are now less common.

Cikapula are gardens situated in low and fertile lands not close to streams; they are used mainly for planting pumpkins or maize at the end of the dry season. Citipula are traditional gardens for beans or peanuts only, but good agriculturists now use maize as well in rotation.

Common gardens, or gardens of the chief, silikali,(2) are still remembered; in the past they fulfilled functions of social assistance and provided grain

(1) The following data have been obtained from informants only as no study has been carried out in this area.
(2) A Swahili word derived from the Persian Serikali (Sanderson).

for the chief's household and guests, as described when discussing Cewa land tenure[1].

Until a few years ago the Yao of Ichinga practised a system of shifting agriculture, moving their villages once the land had become exhausted, about every five or six years. The tendency is now to keep villages in the same place and come back to land which was once cultivated. Agriculture is becoming more stable, as people use their gardens in rotation within a given territory and do not abandon the land altogether.

Land in the neighbourhood of Vila Cabral is abundant in relation to the uses to which it is put. As a consequence, rights over land are ill-defined and the range of legal situations arising from the use of the land is narrow. Land is obviously not sold nor rented nor pledged. It is also seldom lent. Rights over fallows are not recognised and if a man does not cultivate a plot for more than one year anyone can use it; this is so even in the case of the fertile matimba, of which there is also an abundance. Some of the produce of the matimbe is sold to Europeans in Vila Cabral town and some to other Africans; a class of intermediaries is arising, buying agricultural products in the villages and selling them for a higher price in town.

In this area land itself is inherited only if there are fruit-trees on it. On a man's death his wife or wives and young children continue to cultivate the land they previously held. Married children do not ask for any part of such land but they have a right to fruits of fruit-trees that may be standing on it. The deceased's lineage has a definite right to a share of the products of the land and its fruits, and this may entail a right to the land

(1) I was told that the D.C. of Vila Cabral is planning to re-establish the custom, formerly forbidden by the Administration, but omitted to check on this point.

itself: if any member of the deceased's lineage happens to live nearby he may ask for part of the land, but he will not do so unless there are trees on it. Informants say that nowadays a man's lineage does not tend to ask for either land, crops or any property of the deceased except money. I am not certain whether this is so because money alone is considered worth having or whether this is part of the increasing tendency to leave the property of the deceased for his children.

Marriages are mostly uxorilocal and on divorce a man almost invariably leaves his wife's village and returns to his own. The position as to property appears to be that if a man is leaving of his own free will he is well-advised not to take with him more than his personal objects; if, on the other hand, he is being divorced by his wife, he is given part of the crops, money and agricultural utensils by his wife's family. What is given to him seems to be a matter of discretion rather than of law.

Whether the marriage was uxorilocal or virilocal the children of the couple belong to the woman's family and will stay with her. If the marriage was virilocal the children are entitled, after the divorce of their parents, to come to their father's land and pick up the fruits of fruit-trees (planted, if not by their mother, at least in her time). The same cannot be said of crops because these were sown by another wife of their father, and not by their own mother.

Again, if a man dies and his wife was living with him, she will on his death return to her own village taking with her her young children; such children can claim fruits on their father's land and often do so[1]. If they are adults, they can claim the land itself if they reside on the area, but this is not normally the case; brothers of the deceased are the only persons for whom it may be practicable to take up the land but, because land is still

(1) If such a case is taken to the chief, the latter upholds the rights of the children.

abundant, they will not usually do so.

If a woman married uxorilocally dies, her husband will leave the village and the children will be taken care of by a female member of the woman's matrilineage, normally a 'sister' who may then occupy the deceased woman's land in trust for the children. The husband of the deceased, as he leaves the village[1], will be given a small part of the crops, money and agricultural utensils at the discretion of his wife's family. If a woman married virilocally dies, her children will be taken away by her family but they will be entitled to fruits in their father's land as described.

Some men in the Vila Cabral area have streamside gardens before they marry. These are more often than not abandoned on marriage because women's families tend to consider that a man who has his own gardens is not fully integrated in their society and, furthermore, wastes time in cultivating those gardens. Streamside matimbe are sometimes inherited in Vila Cabral: mostly those situated in women's villages, for the reasons just given.

Both streamside gardens and common gardens are in Vila Cabral acquired through occupation. No permission by the headman is required and he does not even have to be informed that such occupation has taken place. Abandoned land does not revert to the headman. Unless the owner of a garden has made it plain - by leaving some kind of beacons or by clearing the grass - that he intends to cultivate his garden again, anyone is entitled to occupy it.

It is adequate at this stage to refer to the theory of the devolution of 'estates of holding', propounded by both Gluckman and J.C. Mitchell. The Yao of Mozambique appear to have provided in the past one of the best illustration of the theory one could hope to have. Informants state that Mataka

(1) If he was a good husband, the woman's family will try to persuade him to stay, which is only possible if they have another woman to give to him.

gave his brave warriors, not necessarily his relatives, certain areas to rule over; lesser chiefs, too, gave land to others who became ipso facto their subordinates.(1) Village headmen allotted plots to each asyene mbumba (warden of a 'sorority group') of the area, who in turn gave land to his dependents. Abandoned land reverted to the headman who re-allotted it at a later stage.

This, which coincides in substance with the Gluckman-Mitchell thesis, is said to have been the position among the Yao of Mozambique. Yet this picture of a highly organised hierarchy of holders of rights in land is not to be found at present among that tribe. Individuals do not receive land from their wardens and chiefs do not allocate land to anyone. Abandoned land does not revert to the African authority for re-allocation, since neither chief nor village headman perform the duty of distributing land; fruits on abandoned land do not belong to the headman exclusively and can be picked by any passer-by.(2)

It is difficult, if not impossible, to reconcile Gluckman and Mitchell's theory (and my own data on the past position in Yaoland) and present day facts. One can only assume that things have changed and that a combination of factors (such as greater availability of land, as well as a diminution in the powers of traditional African authorities)(3) has made for greater individual freedom and informality in the process of land acquisition.

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(1) This subordination could only be terminated by defeating in battle the chief from whom one was holding land and office.
(2) Moreover, where the theory is applicable one would expect headmen's areas (and not only chiefs' areas) to be well-defined. This is in fact not so. A mwene's area is partly limited by natural borders and partly by people. Areas where there are no populations cannot be said to belong to this or that mwene(headman); when put the question, informants replied 'one will know to whom they belong once they have been occupied'.
(3) Could one perhaps argue that in the past the process of granting land to someone who became a subordinate chief was only incidental to its main purpose (which was one of transferring political power) and that since power is no longer granted by traditional chiefs, the whole process has collapsed?

Within the circunscrição of Vila Cabral, where the vast majority of the Yao of Portuguese territory live, cash crops have been planted in the two administrative posts of Muembe and Litunde.(1) In Muembe no dramatic development has taken place because land for tobacco (cotton was only cultivated there for a few years) is plentiful,(2) with the result that very much the same situation described for Vila Cabral prevails.

In Litunde both cotton and tobacco have been planted. Cotton was a compulsory crop until 1961,(3) when the cotton concessionaires ceased to interfere in production and became mere buyers of the product. Villagers are now free to plant or not to plant cotton but prices have not risen substantially and are still very low(4). A government body, theInstituto do Algodão, provides seeds free of charge, directs cultivation and buys all cotton produced. One hectare of cotton brings to the African between £12 and £25 per year.

Provided certain climatic conditions prevail, almost any land is suitable for cotton(5). Since land is plentiful and cotton is an annual crop, no system of permanent and well-defined rights over land has developed. Land for cotton is not sold, rented, pledged or inherited, any more than any other land.

(1) And also in some chiefdoms around Vila Cabral town: Mponda (tobacco and cotton), Catur (cotton), Selemane (tobacco), Chala (tobacco).
(2) Muembe has an African population of only 8,552 as compared to 29,115 in Litunde (1963 figures) for roughly the same area.
(3) Planting cotton to provide raw material for the cotton industry in Portugal was started in 1934; in 1949 the privileges of the cotton concessionaires were increased and included complete exemption from payment of taxes 'of any kind whatever' (decree 37523, 1949).
(4) A kilogram of cotton is now bought by the government at 11d if the cotton is classified as of the first class, and at 7d if it is of the second class.
(5) Africans plant cotton wherever they wish; in some parts of the colony (e.g. Chiuta, in Tete district) they were compelled, before 1961, to cultivate in certain areas (concentrações). The Instituto do Algodão now merely recommends that a plot should be cultivated with cotton one year, the next year with maize and then be left fallow for two years, but these instructions are not always complied with.

This does not amount to saying that the cultivation of this crop is not important in some respects. One consequence of cultivating a cash crop is that young people have their own income, derived from their own gardens of cotton, whereas in other gardens they merely help their parents. Money made with cotton gardens can be disposed of by their owners with complete independence.(1) Again, husband and wife sometimes disagree as to the use to which money arising out of the sale of cotton should be put, and may decide to cultivate separate gardens - a situation which can arise whatever the type of garden but one which the cultivation of cash crops tends to favour.

In the whole area of Vila Cabral tobacco matimbe are the only gardens which are sometimes inherited, because tobacco requires soils which are relatively rare, In Litunde such gardens are regularly inherited and have passed from fathers to sons for several generations now. So much importance is attached to these gardens that they have originated a shift from the practice of uxorilocal marriages to that of virilocal marriages.(2) A man inheriting a litimbe from his father is reluctant to abandon it on marriage; partial virilocality follows, namely, he will ask one of his wives(3) to move into his village and live with him.

There is now practically no vacant tobacco land in Litunde. A garden cannot be acquired by opening up new land and some form of derivative acquisition has to be resorted to. When land is inherited a man is said to be ill-advised to alienate any portion of it without informing his brothers.(4) This is considered a precautionary measure, destined to avoid future misunderstandings, and it is held that a man can dispose of his land as he pleases, even if inherited; a man should equally inform his njomba and the village headman of the intended transaction. On a man's death his eldest son occupies his land and gives plots to those of his brothers who may ask for them.

(1) But it is usually kept by parents on their children's behalf.
(2) A man explains to his wife's family that he has a tobacco garden and asks permission to take the woman with him.
(3) The one he likes best, informants say.
(4) If a man is merely lending his land he is not expected to inform anyone of the fact.

In the chiefdom of Chala, near Vila Cabral, and probably in Litunde too, some form of onerous contract is now entered into [1] which has entirely replaced the old gratuitous loans: land is lent on the understanding that some part of the product will, at the time of harvests, be given by the borrower to the lender but the amount to be paid is not fixed at the time of the agreement and will depend on the harvest itself.

In the tobacco gardens in Litunde a presumption of ownership exists even when land is left fallow and no beacons were placed on it. Contrary to what happens in other areas, in Litunde even if a man does not cultivate his garden for two or three years he is still held not to have abandoned his land. Unlike other areas too, litigation often arises in Litunde, mainly boundary disputes and cases about alleged removal of beacons.

The tobacco gardens I have been referring to so far are streamside gardens which produce a quality of tobacco called labo. Tobacco of an inferior quality - balone - is also cultivated in Niassa in ordinary gardens (away from streams) [2] but traders do not buy it and it is either consumed by the cultivators themselves or sold to other Africans.

It was pointed out that in areas where land for tobacco is scarce and a high profit is made with its cultivation, this has had the effect of changing residential habits. It may further be noted that tobacco planting has also had an effect on ~~the~~ division of labour between husband and wife. The common pattern among the Yao as among other African people is for the husband to help his wives in their gardens and only exceptionally - if there is friction between him and his wives or among the wives themselves - does he tend to have his own garden. As, however, tobacco is valuable in Niassa, there is a tendency for the man to do more than merely help his wives: he tends to own a tobacco garden, while the woman cultivates food crops [3]. Mutual help, in this case, is reduced to a minimum. Where

(1) But land is still not sold, or so I was told.
(2) This is planted, in small quantities, by women. Only when the cash value of tobacco is high - which is never the case with the balone tobacco - do men take the trouble of owning their own plots, in their own villages.
(3) Matimbe gardens, envolving heavy initial work are usually men's gardens. In fact, unmarried women never seem to own them.

on the other hand, only tobacco of poor quality can be planted, tobacco gardens are situated in the wife's village and no change of residence takes place: women cultivate them, as they cultivate any other gardens, with the help of their husbands.

The fact that tobacco is so much more valuable than anything else in Niassa also accounts for the greater freedom of women in disposing of food crops and even fruits.(1) Men have come to consider that only tobacco is worth their time.

I have been dealing with arable land only, because there is very little to be said on other uses made of the land. With regard to sites for building huts, anyone is entitled to build a hut on any vacant part of the village, provided that one must either be or become a resident of that village.

Cattle and stock are hardly ever owned by the Yao but where they exist they can graze anywhere in the immediate neighbourhood of a village (or even in it), or further away.

Methods of cultivation - The methods of cultivation of the Yao resemble both the Ngoni's and the Cewa's and indeed those of most Central and East African tribes. A garden is started by felling down the trees on it; the branches cut are gathered around the stalks of the fallen trees and fire is set to the lot. In the area occupied by the resulting ashes

(1) The position generally speaking is that women can dispose of small quantities of produce but not of large ones without their husbands' agreement. Where tobacco is her husband's main activity, a woman can dispose of all her harvest.

(lisandi), maize is then sown. In the remaining part of the garden small mounds (cikweke) are usually made of grass and soil and are set fire to, once the grass has dried: maize is then sown on them. When the rains come, the cikwekwe are undone and long ridges, matutu (sing. litutu). of soil and green grass are made to include the maize plants.

If, for some reason, a man is late in making his garden, he will not prepare the small mounds (cikwekwe), but will just hoe the soil around the lisandi and sow his maize in it. Gardens are only prepared in this way in an emergency; this simplified way of starting a garden is called citemela, while the more elaborate and far more common gardens described previously have the name of mapanje (sing. mbanje).(1)

Informants say that instead of making long ridges, round mounds were formerly used which were probably(2) called litendewa. In the case of tobacco and cotton neither ridges nor mounds are made as these crops are planted on a flat ground.

Many Yao around Vila Cabral practise a form of rotation of crops which gives very good results. In the past a man always had a garden for beans or peanuts (citipula), by the side of his main garden; citipula were prepared a few months after maize had been sown, while a man was waiting for the time to do the weeding in his main garden. Nowadays most cultivators use both types of garden for both crops in rotation, and this annual alternation of maize and peanuts (or beans) is said to yield excellent results.

Quite frequently nowadays, when cultivating on the slopes of hills, the Yao make the ridges in their gardens follow the contours of hills, so that each ridge protects the next one from being washed away in the rainy season.

(1) The term is also used to refer to any new garden. A maize garden not in its first year is called lisala, whereas if it has already been abandoned is referred to as liundu.
(2) Some doubt was expressed as to the name of such mounds.

The Yao dig the soil with short-handle hoes, unlike the Ngoni whom they despise as cultivators. The Yao consider themselves more efficient, not because of their methods (which do not differ substantially from those of other tribes) but because of their greater attachment to the land.(1) Among the Yao trade itself is based on agriculture. Less orthodox jobs provided for by European occupation do not seem to appeal to them; they are said by others (inter alia the Ngoni) to be too conservative to care to change their mode of living.

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(1) But one ought not to insist too much on the view that such-and-such a people are good cultivators, or otherwise. J. Nicoll writing by the end of the last century considered that the Yao were no cultivators and that it were the Ngoni who excelled in agriculture, at least in directing local peoples (P.T. Terry, 'African agriculture in Nyasaland - 1858 - 1894' - Nyasaland Journal, XIV, 2, 1961).

CONCLUSIONS

It is now possible to draw some conclusions on Portuguese rule generally as well as on its specific effect, if any, on the customary land laws of three tribes inhabiting Lake Nyasa region.

Various charges have been levelled at Portuguese rule. It has been described as oppressive as well as inefficient; and, as far as the future is concerned, it has been said that there are no signs that the Portuguese are intending to leave Africa, as other colonial powers did at various times since World War II.

I shall deal in the first place with the latter point, with the apparent unwillingness of the Portuguese to accept what has been thought of by other colonial powers as an irreversible trend of events. Dr. Salazar, the Portuguese prime minister until a few months ago, has repeatedly stated the Portuguese official position. Europe, he argues, has abandoned her former belief that it is her duty to civilize the peoples of Africa; Portugal alone has remained faithful to her vocation.(1) The Constitution, 1933, epitomizes the ideology of the regime when it states that 'it is of the essence of the Portuguese nation to fulfil its historical role of possessing and colonising overseas territories and of civilising their indigenous peoples'.(2)

Dr. Salazar's next argument is that Portuguese colonial experience is unique. They, of all colonizers, have created a multiracial society. He goes as far as asserting that multiracialism is a Portuguese creation.(3) Because of this community of feeling and culture, Portugal and her colonies

(1) A. Oliveira Salazar, A política de Africa e os seus erros, Lisb.,1967, p.11.
(2) 'É da essência orgânica da Nação portuguesa desempenhar a função histórica de possuír e colonizar os domínios ultramarinos e de civilizar as populações indígenas que neles se compreendem' (Article 133).
(3) A.O. Salazar, Declaração sobre política ultramarina, Lisb., 1963, p.8.

form an indivisible whole. The Constitution of 1933 describes the Portuguese state as a unitary republic[1] and this declaration, Dr. Salazar argues, represents no more than a state of consciousness (um estado de consciência) stratified in centuries of history[2]. Referring to demands put forward for the independence of Angola, Salazar has said that Angola is a Portuguese creation and 'does not exist without Portugal'.[3]

Spokesmen for the regime have repeated and paraphrased Dr. Salazar's arguments without adding much original thought. But special reference should be made to an eminent Brazilian sociologist, Gilberto Freyre, who is not a full supporter of the regime and who has argued the Portuguese case with some plausibility. He has put forward his theory of 'luso-tropicalism': the Portuguese have always allowed their culture to be influenced by other cultures and have been instrumental in spreading these new values to the parts of the world which they have occupied. Architecture, plants, furniture, food habits, children's toys, have been interchanged between the various parts of the Portuguese empire, with the result that Angola resembles Brazil and Brazil reminds one of Goa. Colonisers from northern Europe, on the other hand, have lived in the tropics as rich patients in hospitals, protecting themselves against contamination by the environment.[4]

Gilberto Freyre bases his theory on the ground, which is always slippery, that special national characteristics can be detected and made to account for policies and historic events. Nothing, he argues, is more anti-European that the psychology of the Portuguese. Their mixed blood, their contact with Africa and the East, have given them a plastic mind, a lack of rigidity of principles, an eternal search for lost ways; this flexibility which is the cause of their success as colonizers is in fact

(1)Article 5.
(2)Declaração....., p.4.
(3)Declaração....., p.5.
(4)Gilberto Freyre, Aventura e rotina, Lisb., 1953, p.350.

responsible for their failure as an European nation.[1]

Portugal's solution for her African empire is therefore, for Freyre as for Salazar, one of multiracialism. African countries, wrote Salazar, either organise themselves multiracially or they must be considered lost to civilisation.[2] There is no solution, as he sees it, for the African people: if left to themselves they inevitably fall prey either to colonialism or to neo-colonialism.[3]

On the subject of independence Salazar is most evasive. He has stated that independence, because it is a natural phenomenon, is an hypothesis to be reckoned with but no date could or should be set for it.[4] Foreign minister Franco Nogueira in 1961 also asserted that all depends on the social evolution of the populations and that no date should be decided upon as yet. One presumes, for the sake of consistency with arguments summarised above, that both ministers had in mind the independence of multiracial colonial societies only, and that they did not envisage independence in any other circumstances.

It may at this stage be commented that the official Portuguese viewpoint would be somewhat attractive if only the premises on which it is based were true. If Portuguese Africa had become a truely integrated society, like Brazil, one might agree that a sui generis type of colonization had taken place which was more valid than most. As it happens this is not so. As has been repeatedly pointed out,[5] the policy of assimilation put forward by the Portuguese government has failed to assimilate more than 1% of the total African population of either Mozambique or Angola. The number of persons born of European and Negro parents is not impressive either[6] and does not support the view that miscegenation is taking place

(1) G. Freyre, O. mundo que o português criou, Lisb., 1940, pp.12-5.
(2) Determinação..., p.7.
(3) Determinação..., p.6.
(4) Interview with 'Life' magazine, May 1962 (apud M.J. Homem de Mello, Portugal, o Ultramar e o futuro, 1962).
(5) Inter alia by J. Duffy, Portuguese Africa, Cambr. (Massa.), 1959, p.295.
(6) The total number of half-castes in Mozambique (and this includes Afro-Asians and others) was in 1950 25,150 (official census) for a total population of almost six million.

on any large scale. While it cannot be denied that such associations between Portuguese men and African women were very common in the past,[1] it is also a fact that they have become less and less so; as Duffy has rightly noted, Mozambique is now whiter than it has ever been.[2]

Dr. Salazar does not define his use of the term 'multiracialism' and he may conceivably be thinking of multiracialism without miscegenation. But for the term to mean anything at all it has at least to imply equality between all members of a given society and their equal participation in that society. While it is true that, since 1961, all inhabitants of Portuguese Africa are Portuguese citizens, it is quite another matter to suggest that they have, as yet, an equal share in social duties and benefits; neither are Africans being given political education and responsibility such as to lead one to believe that their full participation in society is a forthcoming development.

Not only has Portugal been considered anachronistic in her attitude towards Africa, but she has also been considered an oppressive and inefficient colonial power. The fact that it was oppressive had considerable repercussion on the lives of the peoples studied in this thesis and I shall come back to this point. The fact that it was to some extent inefficient is less relevant. In fact, I would suggest that Portugal's alleged inefficiency (for which were partly responsible her limited economic and demographic resources) worked to her own detriment rather than to anybody else's. Not being industrialised herself, she was not in a position to use her African territories either as suppliers of raw materials or as markets to the same extent that other European colonial powers did.

(1) This is very apparent in the case of female prazo-holders, the registers concerning whom are still available and indicate that they were almost invariably coloured women.
(2) Op. cit., p.267.

The difference between what Portugal failed to do for Africans and what other colonial powers failed to do for Africans appears to be only one of degree. To take one aspect, but a most important one, that of education. This was undoubtedly most poor in Portuguese Africa; but it was less poor in the neighbouring British territories only because missions had higher standards and were more active in these territories. During the mandate system the government of Tanganyika was accused of spending only 3d per head on the education of African children, as compared to £1 for Europeans;(1) in 1937 of one and a quarter million African children of school age in the territory, over one million attended no institution of any sort.(2) In Nyasaland, known throughout East Africa for the relatively high standards of education of her people, schools remained predominantly missionary schools(3) until at least 1946.(4)

Where Portuguese administration was more obviously at fault was in its labour laws, in the obligation for Africans to cultivate certain crops for what were unrewarding prices and, generally, in the harshness with which the system worked (quite often in defiance of the provisions of the law). Labour requirements and to some extent lack of trading facilities caused massive emigration over the years(5) and there can be little doubt that almost every aspect of African life was unfavourably affected by these conditions.

Perhaps the one aspect which remained practically untouched is the one dealt with in this study: land law. Paradoxically, it was precisely because Portuguese rule was neither efficient nor liberal, that land was at all times

(1) Minutes of the 29th session of the Permanent Mandates Commission, 27th May to 12th June, 1936.
(2) Annual Report of the Education Department of Tanganyika, p.14.
(3) In Portuguese territory, on the other hand, protection granted to Catholic missions and discrimination against other denominations have been responsible for shortage of missions as well as for low standards of the existing ones.
(4) Annual Report on Nyasaland (publ. by the Govt. of Nyasaland), 1946.
(5) See ante, pp. 153 et seq.

plentiful. Because Africans tended to emigrate to other territories, those who remained behind were left with more than sufficient land for their needs. Secondly, there was never any considerable influx of settlers,(1) such as occurred in Kenya or the tea estates of Southern Nyasaland. European occupation of Mozambique consequently had neither the effect of depriving Africans of their lands nor of transforming them into squatters at the will of landowners(2) nor indeed of causing their land law to evolve out of its traditional customary patterns. Mozambique remains underpopulated(3) and undercultivated to this day (of its 77 million hectares only 268,333 were in 1951 under cultivation)(4) and pressure for land cannot be said to be serious.

It might be noted in passing that whereas Portugal's administrative practices often fell behind the standards of other colonizing nations, her laws were often more enlightened. Concern that Africans should have a secure title to their land dates back to 1832 when absolute ownership of land by Africans was envisaged for the first time.(5) Laws enacted subsequently as often as not provided for a right of full ownership for Africans.(6) Such legislation was never put into effect mainly because

(1) Portuguese policy was certainly not effective in attracting European settlers to the territory.
(2) The gravest consequence of the system which prevailed in the Zomba and Blantyre districts of Nyasaland derived from the fact that landowners came to allow settlers to reside on their estates only in return for a period of labour. This practice was disapproved of in the Report on the Cilembwe Rising, 1915, but continued nevertheless. As late as 1961 the law, recognising that attempts to abolish the system had failed and all that had been achieved was a reduction in the number of squatters, once more made provisions concerning their rights.
(3) Its average density of population is at present 7 inh./sq.Km.
(4) J.G. Alfaro Cardoso, 'Noções gerais sobre a agricultura e a indústria florestal em Moçambique', Boletim da Sociedade de Estudos de Moçambique, XXI, 70, 1951.
(5) See ante, p.144.
(6) See ante, pp.173, 176, 177, 187, 191.

Africans did not (as they do not to the present time) feel the need for greater security than is provided by their traditional law;[1] it ought, however, to be acknowledged that the concern existed that Africans should have the widest rights the law of property can grant.

It is difficult, and somewhat of an idle exercise, to speculate on what would have been Portuguese policy on land matters if there had been a shortage of land. The British answer, even in areas of much higher density of population than Mozambique, was not to interfere with African land tenure: pressure was put on Africans to improve their use of the land, not to alter their traditional tenure.[2] As a result, most land tenure in territories as wide apart as Tanzania, Zambia and Malawi is still purely customary.[3] So is it in Mozambique, for reasons which have a good deal to do with Portuguese administration but are not the direct and immediate consequence of it.

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(1) Africans in Tanganyika did not obtain rights of occupancy, as they could have done, for a similar reason. C.M.N. White, writing on Northern Rhodesia, states that Africans occupy both reserves and trust land 'on a basis which can only be described as customary' ('A survey of African land tenure in Northern Rhodesia', Journal of African Administration, 1959, XI, 4).

(2) A.A. Oldaker, 'Tribal customary land tenure in Tanganyika', Tanganyika Notes and Records, 47-8, 1957, p.118.

(3) A few quotations will prove the point. 'Private ownership of land by Africans in Nyasaland has never yet developed to any considerable extent', (A.J. Hanna, The beginnings of Nyasaland and N.E. Rhodesia, Oxford, 1956), On N. Rhodesia writes C.M.N. White: 'In areas where no commercialisation of local resources has occurred and land has continued to be plentiful, agricultural systems have tended to change little and the content of land rights has remained undeveloped' (op.cit.).On Tanganyika: 'In many parts of Tanganyika customary systems of land tenure have as yet been little modified' (Hailey, An African survey, Lond., 1957, p.782). In Nyasaland and N. Rhodesia 'little or no attempt has been made to interfere with traditional customs of land tenure, in spite of the density of population in the Shire Highlands and in some parts of the N. Rhodesian reserves' (A.J. Hanna, The story of the Rhodesias and Nyasaland, Lond., 1960).

APPENDIX A

Excerpt from the royal instructions given to the first viceroy of India, Dom Francisco de Almeida, on March the 5th, 1505.

...'E com esta desymulaçam saltares em terra no lugar em vossos batees, e com a mayor segurança e bom recado que posaes tomarees loguo todos os mouros mercadores que hy esteuerem de quaesquer partes que sejam e todo o ouro e mercadorias que lhe achardes, no que se poera tal recado como compre por noso seruiço, e os ditos mouros catyvares e aos naturaes da terra nam fares dano asy em suas pesoas como em suas fazendas porque todo queremos que lhe seja gardado, dezendolhe que aos ditos mouros que mandamos catyuar e tomar todolo seu o mandamos asy fazer por serem imiguos da nosa samta fee catholica e com eles teermos contynuadamente guerra, e que a elles sempre aveemos de folgar de fazer todo beem e merce, e de serem bem trautados e aproueytados asy como cousas nossas proprias em cujo lugar sempre os aveemos de teer. E que nam se escandelizem de cousa alguma porque em todo receberam fauor e bom trauto. E nos direitos do rey, a saber, aquelles que elle ouuver da terra nos praz que nam bullaes e lhos leixes aver asy como os avia ate nos mandarmos o contrairo, e com todas booas pallauras seja o dito rey e os da terra bem tratados e fauorecidos'.

Apud A.Lobato, A expansão portuguesa em Moçambique de 1498 a 1530, Lisb., 1954, vol. I, p. 81.

APPENDIX B

Main articles in the Civil Code regulating the contract of enfiteuse

(or emprazamento or aforamento)

Article 1653 - Da-se o contrato de emprazamento, aforamento ou enfiteuse, quando o proprietário de qualquer prédio transfere o seu domínio útil para outra pessoa, obrigando-se esta a pagar-lhe anualmente certa pensão determinada, a que se chama foro ou canon.

Article 1654 - O contrato de enfiteuse é de natureza perpetua, Os contratos que forem celebrados com o nome e forma de enfiteuse, mas estipulados por tempo limitado, serão tidos como arrendamentos e como tais regulados pela legislação respectiva.

1 - O enfiteuta ou sub-enfiteuta de emprazamento ou subemprazamento, que tiverem mais de vinte anos de duração, podem remir o respectivo encargo nas seguintes bases:
   a) O preço da remição é de vinte pensões acrescidas de um laudémio, quando for devido, avaliando-se para este efeito o prédio com a dedução do valor do foro;
   b) Consistindo a pensão em géneros o valor destes será calculado pela média dos preços correntes.....
   c) .....
   d) .....
2 - Pretendendo o subenfiteuta remir o encargo, deve chamar à acção tanto o enfiteuta como o senhorio directo, recebendo este a importância do foro, acrescido do laudémio quando for devido, que o enfiteuta é obrigado a pagar-lhe, e recebendo o enfiteuta o valor da pensão livre a que não tiver direito o senhorio directo.
3 - .....

Article 1655 - O contrato de emprazamento será celebrado por escritura pública, e só produzirá efeito, em relação a terceiro, sendo devidamente registado.

Article 1656 - A qualidade e quantidade do foro será regulada a aprazimento das partes, contanto que seja certa e determinada.

Article 1657 - Não poderá convencionar-se encargo algum extraordinário ou casual, a título de lutuosa, laudémio ou qualquer outro.

Article 1658 - Se o emprazamento for de prédio urbano, ou de chão pa-

ra edificar, o foro será sempre a dinheiro.

Article 1662 - Os prazos são hereditários, como os bens alodiais; não podem, porém, dividir-se por glebas, excepto se nisso convier o senhorio.

1 - A repartição do valor entre os herdeiros far-se-á por estimação, encabeçando-se o prazo em um deles, conforme convierem entre si.
2 - Se não puderem acordar-se, será o prazo licitado.
3 - Se nenhum dos herdeiros quiser o prazo, será este vendido e repartir-se-á o preço.
4 - Se o senhorio consentir na divisão por glebas, cada gleba ficará constituindo um prazo diverso, e o senhorio só poderá exigir o foro respectivo de cada um dos foreiros, conforme a destrinça que se fizer.
5 - .....
6 - .....
7 - Sendo o prazo dividido sem consentimento escrito do senhorio, cada gleba continua a responder pela totalidade do foro.

Article 1663 - Na falta de herdeiros testamentários ou legítimos do último foreiro será o predio devolvido ao senhorio.

Article 1664 - Só podem ser objecto de emprazamento os bens imóveis alienáveis, salvas as seguintes disposições.

Article 1667 - Podem dar de emprazamento todos os que podem alienar seus bens.

Article 1668 - Os casados não podem, contudo, emprazar seus bens sem comum consentimento, seja qual for o seu contrato de casamento.

Article 1670 - O senhorio directo é obrigado a registar o encargo enfitêutico para que este produza efeitos para com terceiros.....

Article 1671 - Na falta de pagamento de foros, o senhorio directo não tem outro direito, ainda que o estipule, senão o de haver os foros em dívida, e os juros desde a mora.

Article 1672 - Se o foreiro deteriorar o prédio, de modo que o valor deste não seja equivalente ao do capital correspondente ao foro e mais um quinto, o senhorio directo poderá recobrar o dito prédio sem indemnização alguma ao foreiro.

Article 1673 - O foreiro tem direito a usufruir o prédio, e a dispor dele como coisa sua, salvas as restricções expressas na lei.

Article 1675 - O foreiro será obrigado a todos os encargos e tributos que forem lançados ao prédio ou à pessoa em razão do prédio.

1 - O senhorio directo deverá, contudo, abonar ao foreiro as contribuições correspondentes ao foro.

Article 1676 - O foreiro pode hipotecar o prédio e onerá-lo com quais-

quer encargos ou servidões sem consentimento do senhorio directo, contanto que a hipoteca ou o ónus não abranja a parte do valor do prédio correspondente ao foro e mais um quinto.

1 - O senhorio directo terá o direito de preferência nos arrendamentos por período superior a dez anos.

Article 1677 - O foreiro pode doar, ou trocar livremente o prédio; mas neste caso deverá fazê-lo saber ao senhorio directo, dentro de sessenta dias, contados desde o acto da transmissão. Se assim o não fizer, ficará solidariamente responsável com o cessionário pelo pagamento das prestações devidas.

Article 1678 - Se o foreiro quiser vender, ou dar em pagamento o prédio aforado, deverá avisar o senhorio directo, declarando-lhe o preço definitivo que lhe é oferecido, ou por que pretende aliená-lo; e se dentro de trinta dias o dito senhorio não preferir e não pagar, poderá o foreiro realizar a alheação.

1 - O direito de preferência compete igualmente ao foreiro, no caso de querer o senhorio directo vender o foro ou dá-lo em pagamento. Para este efeito, ficará o dito senhorio sujeito à mesma obrigação que, neste artigo, é imposta ao foreiro, em análogas circunstâncias.

2 - Preferindo e pagando, quer o senhorio directo, quer o foreiro, fica extinto o emprazamento.

3 - .....

Article 1680 - Abrangendo o prazo diversos prédios, não poderá o senhorio directo preferir uns e rejeitar outros.

Article 1681 - Se o foreiro não cumprir com o disposto no artigo 1678, o senhorio directo poderá usar, dentro do prazo indicado no artigo 1566, do direito de preferência, havendo o prédio do adquirente pelo preço da aquisição.

1 - Igual direito compete ao foreiro no caso do parágrafo 1 do artigo 1678.

Article 1682 - Se o prédio emprazado for penhorado por dívidas do foreiro, não poderá ser posto em hasta pública, sem que seja citado para o dia da praça o senhorio directo, o qual terá a preferência, querendo haver o prédio pelo maior lanço.

Article 1684 - O senhorio directo não pode exigir as prestações atrazadas de mais de cinco anos, senão por obrigação de dívida, assinada pelo foreiro, com duas testemunhas, ou toda escrita do seu punho, ou reconhecida em auto público.

Article 1685 - A acção por dívida de foros é sumária. A execução, quando recaír nos bens do prazo, pode fazer-se tanto nos rendimentos como na raíz, conforme aprouver ao senhorio.

Article 1686 - A prescrição é aplicável aos prazos, da mesma forma que o é aos outros bens imobiliários.

Article 1687 - Se o prédio se destruir ou inutilizar totalmente, por força maior ou caso fortuito, ficará extinto o contrato, sem prejuízo do direito de o senhorio haver do foreiro o valor do seu domínio directo, quando este recaír sobre prédios segurados e a perda resulte de incêndio.

Article 1688 - Se, por força maior ou caso fortuito, o prédio enfitêutico se destruír ou inutilizar, só em parte, de modo que o seu valor fique sendo inferior ao que era na época do emprazamento, poderá o foreiro requerer que o senhorio directo lhe reduza o foro, ou encampar o prazo, se ele se opuser à redução.

1 - Este artigo não tem aplicação quando a destruição seja resultante de incêndio em prédios segurados.

Article 1689 - Os emprazamentos de bens particulares, anteriores à promulgação do presente Código, quer subsistam por contrato, quer por qualquer outro título, serão mantidos, na forma dos respectivos títulos, com as modificações estabelecidas na presente secção.

Article 1693 - O laudémio estipulado nos emprazamentos de pretérito será conservado na forma da estipulação.....

Article 1696 - Todos os emprazamentos fateusins, existentes ao tempo da promulgação deste Código, são declarados hereditários puros, e à sua transmissão serão aplicadas as regras estabelecidas nos artigos 1662 e 1663.

Article 1697 - Todos os prazos de vidas, ou de nomeação, quer esta seja livre, quer restrita, ou de pacto e providência, revestirão a natureza de fateusins hereditários puros em poder dos enfiteutas, que o forem ao tempo da promulgação deste Código, salvas as disposições dos artigos subsequentes.

Ar ticle 1701 - É proibido, para o futuro, o contrato de subenfiteuse ou subemprazamento.

Article 1702 - Os contratos subenfitêuticos de pretérito continuarão a subsistir .....

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APPENDIX C

A brief survey of the role of custom in Portuguese law

As early as 1526 Indian customs were given recognition by Portuguese law: the Foral dos Usos e Costumes of Afonso Mexia is the first document of the kind in a Portuguese territory; in 1834 a Código dos Usos e Costumes dos habitantes não cristãos de Damão a Diu was promulgated, followed in 1854 by the Código dos Usos e Costumes das Novas Conquistas. In Macau a decree of 1909 recognised the validity of Chinese customs in relations between themselves. This decree was in force until 1949, when a new enactment provided that Chinese persons with Portuguese nationality should be ruled by Portuguese law only.

In Portuguese East Africa many attempts were made to codify African customs, although not very successfully.(1) In 1852 there was prepared for Inhambane(2) a Código Cafreal do Distrito de Inhambane, in 74 articles, but the code was found unsatisfactory, among other things because the term milando - the object of the Code - was not defined. This Code, which was never enforced, was in 1889 replaced by a Código dos milandos inhambanenses in 160 articles.

Up to the time of the Civil Code, 1869, in East Africa it was only the Inhambane district that had been furnished with a code of African customs. But several isolated attempts had been made by governors here and there

(1) It may be commented that there seems to have been more concern to register customs in Portuguese Africa than in former British territories. In the latter case the only attempt to codify customary law from the central legislature has been made in Natal; the Natal Code of Native Law, originally compiled and issued in 1875 - 1878 and 1891 respectively, was revised in 1932 (A.N. Allott - Essays in African Law, London, 1960, p.94). The Basuto Laws of Lerotholi may also be mentioned but they are mainly a collection of rules and orders unconnected with customary law (A.N. Allott, op.cit.,p.95)
(2) A district near the capital.

(for example in 1851 and 1853) to have local customs compiled. Descriptions of customary laws in such restatements were, however, too general to be of much help, and too wide a discretion was left to the judge. In 1867 the Portuguese Civil Code repealed all legislation dealing with civil matters not comprised in the Code, but local customs were excepted from this provision. Paragraph 1 of article 8 of the Code exempted no less than six sections of the population (Asians and Africans) in Mozambique alone.

The Code also saw to it that such provision was put into effect; paragraph 3 of article 8 read:

> 'The Governors of overseas provinces shall immediately instruct competent persons to proceed to the codification of the usages and customs excepted in paragraph 1 and which have not yet been codified; such drafts shall be presented to the Government for approval'. (1)

The governors did in fact proceed to appoint commissions for studying the matter but the results achieved were of uneven standards. Practically the only work which deserves to be mentioned is the excellent compilation by J. d'Almeida e Cunha, the Estudo dos usos e costumes dos banianes, bathiás, parses, mouros, gentios e indígenas, dated 1895.

In the meantime, instructions to the effect that customs should be taken into account, proliferate. Thus from the Instrucções para os comandantes militares do distrito de Timor, one understands that it was a part of the duties of military governors to decide civil suits according to customary law whenever Africans did not wish to make use of ordinary courts.(2)

(1) 'Art° 8° - 3° - Os governadores das províncias ultramarinas mandarão imediatamente proceder por meio de pessoas competentes à codificação dos usos e costumes ressalvados no parágrafo 1, e ainda não codificados, submetendo os respectivos projectos à aprovação do Governo'.

(2) It was also frequently recommended that a committee of chiefs should be heard in cases between natives, and that the decision of the majority should be binding.

Subsequently to Almeida e Cunha's work, other restatements of customary law were prepared and the Official Gazette of 1910, to take one instance, mentions three of them: the Projecto de Código de Costumes Cafreais, the Projecto para o julgamento de milandos nos territórios da Companhia de Moçambique and the Apontamentos para o projecto de um código de milandos.

As a result of an administrative reform in 1907, the duty of collecting data for the purpose of codifying African customs passed on to the Department of African Affairs. But a few months before the reform, a Governor's decree ordered those responsible for both civil and military administration to prepare reports describing native uses and customs in the territories under their jurisdiction. District governors were to prepare codes based on such information. In 1909 two drafts of codes were concluded: the Projecto do Código de milandos para a circunscrição de Sena, published in Mozambique's Gazette, and the Bases para um código de milandos which was not published because it was found incomplete. In 1942 Gonçalves Cota handed into the Government his drafts of an African penal code and an African civil code; although they had been prepared following an order by the governor-general, they were never enforced.

From what has been said it may be inferred that although legislators had the best intentions of preparing codes of customary law, in practice such obstacles as lack of trained people and lack of continuity in office militated against the initiative. The law repeatedly recommended that customs should be applied and codes compiled, but no code of customary law has actually been put into force up to the present day,(1) and administrative officers have relied on their own knowledge of customs and on the advice of assessors.

(1) Again, in Mozambique a Governor's decree of 1940 ordered all circunscrições and postos (administrative divisions and sub-divisions of the territory) to keep a book called 'Book for the registration of native usages and customs'. During my stay in Mozambique I saw that such books had been introduced in many districts, but they had either never been used or the register had soon been abandoned.

Recognition of customary law was once more provided for in a relatively recent enactment, the Acto Colonial, 1930, of which article 22 reads:

'In the colonies the stage of evolution of native peoples shall be taken into account; there will be special personal laws for natives creating for them, under the influence of Portuguese public and private law, legal systems temporizing with their usages and customs, individual, domestic and social, provided they are not incompatible with morality and the dictates of humanity'.(1)

Article 138 of the Portuguese Constitution, 1933, presently in force, scarcely presents any variation:

'There will be in overseas territories, whenever necessary and bearing in mind the stage of evolution of the peoples, special personal laws which will create, under the influence of Portuguese public and private law, legal systems. temporising with their usages and customs whenever they are not incompatible with morality, the dictates of humanity and the free exercise of Portuguese sovereignty'.(2)

Two last points may be made. The first is that criminal law has always been an exception to the general rule that Africans should be governed by their own laws. Customary criminal law has not been considered an adequate means of dealing with conditions in modern society. It was decided that Africans should be ruled by special penal laws devised for them; until such laws were enacted Portuguese criminal law would apply but

(1) 'Art° 22° - Nas colónias atender-se-á ao estado de evolução dos povos nativos, havendo estatutos especiais dos indígenas, que estabeleçam para estes, sob a influência do Direito Público e Privado português, regimes jurídicos de contemporização com os seus usos e costumes individuais, domésticos e sociais, que não sejam incompatíveis com a moral e com os ditames de humanidade'.

(2) 'Art° 138° - Haverá nos territórios ultramarinos, quando necessário e atendendo ao estado de evolução das populações, estatutos especiais que estabeleçam sob a influência do Direito Público e Privado português, regimes jurídicos de contemporização com os seus usos e costumes, se não forem incompatíveis com a moral, os ditames da humanidade ou o livre exercício da soberania portuguesa.'

the judge would take into account 'the stage of civilization' of the accused. As no African criminal code was ever promulgated, the position has been the unsatisfactory one of having the Portuguese Code applied, with adaptations.

The second and more important point I would like to make is that recognition of African institutions and customs has been conceived of as a temporary state of affairs, until such time as Africans have become integrated into Portuguese culture. This is the reason why the Estatuto of 1954, while still providing for the application to Africans of their customs, does not recommend codification any longer, as this was felt to be a factor for 'crystallising' the law(1) - an effect contrary to Portuguese long-term policy(2).

To conclude, the critics of the Portuguese colonial system were wrong for once(3). Local customs were always recognised in important enactments and since 1933 their observance has been compulsorily ordered by no less a law than the Constitution itself.(4)

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(1)Similar discussions, it may be noted, have been carried on with regard to British African territories, from time to time.
(2)J. Silva e Cunha, Administração e Direito Colonial, Lisb., 1955. It is typical of the contradictions of Portuguese policy in recent years that the decree 43 897 of 1961 has recommended codification once more (article 1 paragraph 1).
(3)It has sometimes been stated that Portuguese law does not recognise native customs (J. Duffy, Portuguese Africa, Camb. (Massach.), 1959, p.301; A. Robert, 'A comparative study of legislation and customary law courts in the French, Belgian and Portuguese territories of Africa' Journal of African Administration, XI, 3, July 1959, pp.124 et seq).
(4)The restrictions on the application of customary law referred to in general terms in the Constitution have meant, in the subsidiary legislation, that 1) customs which restrict a woman's choice of a husband (e.g. practices of levirate) are not recognised by Portuguse law; 2) an African could successfully evade the application of customary law in the fields of family law and succession by alleging to the D.C. that he had become a convert to a religion which is incompatible with such customs.

APPENDIX D

Short history of the Ngoni of Angónia

It is known that the Ngoni of Angónia as well as those of Malawi, Zambia and Tanzania went northwards from Zululand in about 1820, but there is uncertainty as to the dates of many events, names of leaders and routes followed. As regards the north of Mozambique it appears that two separate branches of the Nguni crossed the Zambezi river at two different points and moved into Tanganyika by different routes. One of the groups - the Mputa group - had crossed the territory now called Angónia in about 1840 and, being impressed with the fertility of the lands around Dómuè Mt., returned some years later to Angónia led by Cidiauonga, regent for Cikusi, a son of Mputa. With Cikusi there started a dynasty of Ngoni chiefs in Portuguese territory. In 1891 he died in Ncheu, being succeeded by his son Gomani.

Father Gonçalves[1], a missionary who studied the history of the Ngoni of Angónia, does not elaborate on the circumstances in which the occupation of the territory took place and merely states that each chiefdom was handed over to an illustrious Ngoni, one of these ' who had emigrated from Natal'. It appears from his description that only in one instance was chieftainship given to a close relative of Cikusi[2]. Margaret Read, writing on the Ngoni of Nyasaland,[3] noted that chiefs in the northern kingdom belonged to the royal clan, whereas in the central kingdom (as a result of a deliberate policy of excluding relatives from power) no chief belonged to the royal clan but all except one were recognised heads of Swazi and Zulu clans (alumuzana); P.H. Gulliver describes a similar duality of policy on the part of the Ngoni rulers of Tanganyika[4]. No information

(1) I am indebted to Father J.B. Gonçalves for allowing me to make use of his unpublished work A Angónia e os seus Angonis, written in the course of his long stay in Angónia.
(2) This was Vumbue, who still has descendants in Cholo (Malawi) who are also chiefs.
(3) The Ngoni of Nyasaland, Oxford 1956, p.13.
(4) 'A History of the Songea Ngoni', in Tanganyika Notes and Records, 1955, p.41.

of this kind is at the moment available with regard to the Ngoni of Portuguese East Africa.

Gomani, like his father Cikusi, fought against neighbouring tribes and extended his dominions, but his reign was short and in 1896 he was killed by the British in what old Ngoni call the 'first British war'. To Gomani succeeded his brother Mandala.

By this time the boundaries between Nyasaland and Mozambique had been defined, with the result that the central kingdom of the Nyasaland Ngoni was divided between two different colonial powers. Gomani I was the last common nkosi for both territories. On the English side, Gomani I was succeeded by Phillip Gomani[1], in his turn succeeded by Willadi Gomani. On the Portuguese side, to Gomani I succeeded his brother Mandala, then Zintambira Rinze; his son Dafulene Dama, the next nkosi, was succeeded by Marcos Dama, deposed by the Portuguese for political reasons. The present nkosi of Angónia is Onesmo Dama, Marcos' uncle, brother of Dafulene and son of Rinze[2].

Father Gonçalves refers to a war with the British in about 1898, known to the Ngoni as 'the second British war'. According to him the British invaded the Portuguese territory and Mandala, fearing for his people and himself, went to Tete with a large retinue to ask the Portuguese Government for help. This brought into the country Portuguese troops who, after fighting with the British, proceeded 'to pacify' the territory. Lieutenant F. Trindade and Commander Brito were two leading figures in these military campaigns and in subsequently setting up a form of administration.

It was at that time that the Portuguese authorities agreed on the temporary removal from the area of the bellicose sons of Cikusi, brothers of Gomani I. The plan was to send them to Lourenço Marques and give them an European education, allowing them to return only when peace had been

(1) Dead in 1954 after being deposed by the British for his stand on the issue of federation.
(2) Chief Onesmo Dama was one of my most valuable informants while I worked in Angónia.

secured and some form of political organisation had already been established. Of the five sons of Cikusi who were to be sent to Lourenço Marques, Mandala, the eldest, died while setting out on the trip; Mkuauila and Junga both died in Lourenço Marques; Kabango, on his return to Angónia, became chief of the area known presently as Jamusse; Zintambira, who by then had the rank of corporal, was given the chieftainship of the lands where his father had resided. Unlike his father, however, Zintambira had no authority over other chiefs, although as far as the Ngoni themselves were concerned he was always greatly honoured as the direct descendant of Cikusi and Mputa.(1)

According to many informants, among them Chief Dama himself(2), the term 'Maguagua', by which the royal Ngoni clan is now generally known in Angónia, originated in a comment by Zintambira as he was being sent to Lourenço Marques: 'We are Maguagua', apparently meaning 'we are the people of the road, we are always on our way'.(3)

Still according to Father Gonçalves, the Ngoni underwent a period of direct rule while Cikusi's sons were being educated in Portuguese ways in the capital of Mozambique. A non-Ngoni man from Quelimane, Cicuncuzi, was chosen as interpreter and right-hand man of lieutenant Trindade. In the meantime commander Brito left for Macanga, where the job of subduing the Cewa, and in particular the chief of Macanga, Cinsinga, proved a difficult task.

In Angónia chiefs were being chosen 'sometimes according to Cicuncuzi's suggestions but always subject to Trindade's approval'. The services of

(1) Informants even nowadays have no doubts that the dance ligubo can only be danced on the death of a member of the royal clan.
(2) Zintambira's son, as will be remembered.
(3) M. Read refers to the Maguagua clan as if it were distinct from the Maseko clan (op. cit., p.119). Presumably the origin of the new term was not as vividly remembered in Nyasaland as it is in Angónia.

another non-Ngoni, Cide[1], like Cicuncuzi an ex-sepoy, were also used. Both distinguished themselves in their jobs and were later allotted chiefdoms.

In the meantime Angónia became part of prazo Macanga, administered by a large company, the Sena Sugar Estates. It was during the administration by the company[2] that the present chiefdoms were created, eight at first, and six at a later date. The chiefs were independent of each other and were only subordinate to the authorities of the prazo.

From the above account one can infer no more than that the royal clan has always been recognised by Portuguese authorities (in the one instance in which a Maseko chief was deposed, he was replaced by another Maseko) and made to play some political role, although by no means its traditional role as supreme rulers. But we are left in the dark as to how many of the chiefdoms existing at the time of Portuguese occupation were recognised, how many more, if any, were created, and whether in attributing political power preference was given to the aristocratic elements of the population, or whether a clean sweep was made of differences in status prevailing hitherto. It is clear that, even nowadays, the Ngoni are thought of as having a superior rank to that of the rest of the population[3], but whether this is

(1) Born in Angónia of parents of Amatengo origin (a tribe from the Songea district of Tanzania). He was one of Father Gonçalves's informants.
(2) See ante, p. 168 . The area is now merely used as a reservoir of labour for the company, which still keeps a permanent recruiting agent there.
(3) 'A Ngoni is always a Ngoni, however poor'. The Ntumba appeared with some reluctance, to agree to this statement made to me by Ngoni elders. J.A. Barnes, writing on the Ngoni of Zambia found that a Swazi considered himself superior to a Kalanga, a Kalanga to a Nsenga, and all superior to the Cewa, the last tribe of Fort Jameson to be incorporated. But he qualifies his statement by adding that 'this ranking order was latent and did not form the basis of a system of social organisation' ('Some aspects of political development among the Fort Jameson Ngoni', African Studies, 1948, 7, 2-3, pp.99 et seq).

so because they have (in a restricted sphere), remained the holders of political power or whether - as seems more probable - they have retained their superior status in spite of the levelling influence of the European administration, it is impossible to say.

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APPENDIX E

A note on the Ngoni of Niassa Province[1]

The bulk of the Ngoni in Portuguese territory, the Maseko of Angónia, have been inhabiting the north-eastern corner of Tete district, west of Lake Nyasa, since about 1858 - 1860.[2]

The Ngoni who at present live east of Lake Nyasa and along the Rovuma river are mostly the descendants of a different branch of Ngoni, that of Zulu Gama. All the nuclei of Ngoni to be found in the Portuguese district of Niassa were formed from Ngoni who emigrated from Tanganyika at different times and on different accounts. Wars with neighbouring tribes and internal struggle for power are the two constants of Ngoni history in Tanganyika as elsewhere, and the latter factor often led to new settlements under a discontented leader. A nduna[3] of the father of Cikusi - the founder of the Maseko dynasty in Portuguese territory, as we have seen - provides one such instance of secession, as he refused to follow his chief into Nyasaland and Angónia and moved to Portuguese territory east of Lake Nyasa. Other cases of secession are known, such as that of Nantuego who, in order to be independent from his nkosi, also left Tanganyika and settled in the area which came to be named by the Administration as the circunscrição of Nantuego. It is known that along the Rovuma river on both its shores there are settlements of Ngoni scattered over an area as vast as that extending from Lake Nyasa to the Indian Ocean.

Apart from these migrations of small parties led by rebels, which took place at various times throughout a number of years, there was also a more massive and more recent exodus from Tanganyika into Portuguese East Africa.

(1) I am indebted to Mr. Basílio Farahane who provided me with much valuable information and allowed me to use his unpublished work, Short history of the Ngoni.
(2) Father Gonçalves, op.cit.
(3) Gambagamba Cainde.

This happened as a result of the Maji-Maji revolt of 1905-6 in Tanganyika and the repression by the German government which followed it. Chief Miandica [1] of the Gama clan was advised by one of his nduna and brother-in-law [2] to settle in Portuguese territory, in an area which at the time was being administered by the Companhia do Niassa. [3] Chief Miandica agreed to this plea and in 1907 left Tanganyika with his people. He stayed for a few years in three or four different places along the eastern shore of the lake; his son, Elias Miandica, the most important of the Ngoni chiefs of the Niassa district, has now settled in Lucambo, also on the eastern lake shore.

A year later, stretches of the border between Mozambique and Tanganyika about which there had been uncertainty, were defined. As a consequence, the village of the nduna who had advised Miandica was included in German territory. Nduna Farahane decided also to leave for Mozambique and took with him a number of followers; for some time they stayed in the Massumba area and in 1911 settled in Mecuela where they have remained to the present day.

From these two main groups other nuclei came to be formed and at present there are some twenty to thirty villages [4] along the eastern shore of Lake Nyasa, spreading over the area which stretches from Miandica's village to the northern boundary of Mozambique. All these villages are, as far as the Ngoni are concerned, subject to chief Miandica [5], who is, however, addressed as 'bambo' and not as 'nkosi' - a title which is still reserved for his

(1) Great- grandson of Zulu Gama (one of the Nguni war chiefs who fled from Chaka's rule in Zululand sometime during the first twenty years of the last century).
(2) David Farahane, father of my informant Basílio Farahane. He was also married to a woman who lived in the Portuguese territory and on this account had often visited it.
(3) See ante, pp. 163 et seq.
(4) Of about 30 or 40 huts each.
(5) The Ngoni of Nova Olivença have a chief, Tamatana, whom the Administration considers a regedor (bambo) but whom the Ngoni regard as being only a nduna (village headman).

cousin Xavier Zulu of the Songea district of Tanzania. The present notes refer to the Miandica Ngoni of the Nyanja country rather than to those along the Rovuma river on which it is at present almost impossible to obtain any information at all. There were various causes for this scattering of the Miandica Ngoni, ranging from deterioration of the soil to tensions within the group.

The Ngoni appear to find it unthinkable that their people should be ruled by village headmen of other tribes, although they do not object so much to a foreign chief; in fact some groups of Ngoni are under Yao rule, as is the case of those living in the area of chief Mataca. Village headmen have been appointed by the Ngoni chief. Salomão Miandica, father of the present chief, provided for the numerous Ngoni who lived near the border with Tanganyika by sending them one of his nduna; a brother of Salomão Miandica was sent as nduna to Mepoche and a relative of the chief was given the administration of Membalanenga.(1)

The number of Magwangwara Ngoni(2) living in Portuguese territory east of Lake Nyasa has been estimated to be about 8,700: 5,500 in Cabo Delgado province and 3,200 in Niassa province(3).

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The Ngoni of Nyasa have been extensively converted to Christianity and my informant's sweeping statement is that there are no pagans among them. While the Catholic mission operating in Angónia has not promoted literacy (less than 1% of Africans are estimated to be able to read and write any language(4)) the Universities' Mission to Central Africa of Mesumba,

(1) B. Farahane, op.cit.
(2) The Ngoni of Tanzania to whom I have been referring.
(3) Velez Grilo, Esboço de um guia etnográfico de Moçambique, 1960.
(4) Father J. Kamtedza, a Jesuit and a Ngoni.

Niassa district, has to its credit appreciable results in the fields of education and welfare of Africans. Almost all the Ngoni in Niassa are Anglicans (including Chief Miandica)[1] and monogamous, at least on the face of it . The few Africans who have skilled jobs in the headquarters of the province - nurses and clerks, mostly - are either Ngoni or Nyanja, in spite of the fact that Vila Cabral is predominantly an area of Yao.

Although the Ngoni of Niassa have undergone more active missionary teaching than is the case with the Ngoni of Angónia, customs in Niassa appear to have survived to an extent unknown on the other side of the Lake.

The Ngoni of the Gama clan did not adopt en bloc a foreign language, and speak what they call 'Angoni', which was described to me as adulterated Zulu[2]. Although 'Angoni' is far from being a pure language, yet it is distinct from the languages of other peoples; it is also to be noted that it is spoken by all nuclei of Magwangwara Ngoni, including those who have remained in Tanzania.

In other respects too the Niassa Ngoni have remained more faithful to their traditions than those of Angónia. The ceremony of initiation of girls in Niassa (but not in Angónia) closely resembles that practiced by old Zulus. It is a private ceremony and it is individually held, taking place as each girl reaches puberty. Cewa practice, on the other hand, (adopted by the Ngoni of Angónia) is that of initiating a number of girls of about 8 or 10 years of age simultaneously and marking the event with

(1) There are a few Catholics, among them a nduna of Miandica, due to the action of the Catholic mission of Messangulo, some 50 miles from Vila Cabral.
(2) The Ngoni of Angónia speak Nyanja only.

important celebrations. In Niassa the private ceremony of initiation is called umbalo, while in Angónia it is known by the Cewa name of cinamwali.

Payment of bride-price (malowolo) is also much more widespread among the Gama Ngoni than it is among the Maseko Ngoni, in spite of the fact that the Niassa Ngoni owned very little cattle.(1) Men without cattle either pay bride-price in money - the high sum of between ten and fifteen pounds - or buy cattle from the Nyanja who breed them, or else make a 'poor man's marriage', sometimes by marrying a cross-cousin. Non-payment of malowolo does not affect either the place of residence at marriage or the rights of the patrilineage over the children, but diminishes a man's authority at home vis-à-vis his wife's family.(2)

Marriages between the Ngoni and the Nyanja tribes are very frequent(3) and the Ngoni have been successful in introducing the custom of bride-price(4) - which the Nyanja now follow even when marrying in their own people. Among the Nyanja, however, the sole effect of such payment is to entitle a man to take away his wife and does not prejudice the right of the wife's lineage to the couple's children.

My informant was one of the first Ngoni in Niassa to marry a Nyanja woman. Her family did not allow him to pay a large bride-price, so that 'his strength would not be increased'.(5) When his wife's brothers, in the customary Nyanja way(6), asked for the children a few years later, my informant took the case to the Portuguese authority. The administration

(1) The area occupied by most groups of Ngoni, including that of Chief Miandica, is tsetse-infested.
(2) Marriages with cross-cousins (cihiwani) are no longer favoured.
(3) The three sons of my informant all married Nyanja women.
(4) But the Yao have not adopted the custom and refer to it as 'a sale'. Marriages between Ngoni and Yao are much more rare.
(5) He paid in fact £2.
(6) The Nyanja were traditionally both matrilineal and uxorilocal. The custom of the woman's family to go to the couple's village and collect their children can only have developed after they had become virilocal (due to Ngoni influence and payment of bride-price), while remaining matrilineal.

upheld the father's claims. At present it is a settled matter that in marriages between the two tribes the children always belong to the father. The Nyanja have consequently ceased to restrict the amount of bride price; the sum of £15 was paid in the case of each of the sons of my informant.

It is doubtful whether customary rules of succession are more or less strictly enforced in Niassa than in Angónia because cattle - the most traditional of all forms of wealth to a Zulu man - is not at present part of most estates. Personal property as well as money are said to be kept by the eldest son of the deceased who should act in relation to his brothers[1] as a good pater familias. Succession to office devolves to the eldest son of the first wife exclusively. One might feel tempted to think that the role of the eldest son as described follows the old Zulu pattern if it were not for the fact that estates are probably so small that there is not much room for partition.

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(1) Including classificatory brothers.

The only source of cash income of the Ngoni of Niassa district is the sale of finger-millet (mauere). The Nyanja are almost as big drinkers of ucuala as are the Ngoni but their empoverished land is unsuitable for the crop. It is not unusual for a Ngoni to harvest three hundred big baskets of mauere grain in a garden of about 2.5 acres. A tin of a gallon full of mauere is sold for ten shillings, both to the Nyanja of the Lake shore and to the islanders of Likoma and Cisumulu in the Lake. In the few areas where rice can be produced[1] it is also sold.

Maize is not sold except for very small quantities in times of shortage to those in need. Wood is bought and sold by the Nyanjas for their canoes for fishing in the Lake but the Ngoni do not take part in these transactions as they themselves are no fishermen and there is no Ngoni village on the Lake shore.

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(1) In the whole of Miandica's chiefdom only two villages have dimbas (riverside gardens) suitable for rice.

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The various centres of Ngoni in Niassa provide a good illustration of the relevance, in cultures of relatively little complexity, of ecological conditions on matters of land law. In Miandica's village - in Lucambo, on a shore of the river of the same name - rights over land are not transferred nor, indeed, have they much permanence. After four or five years' cultivation land is exhausted and has to be left fallow for a period which usually exceeds ten years; in the meantime only cassava manages to survive. Land of such low fertility is obviously not lent nor given away nor inherited.(1)

On the other hand, in Farahane's village - Mecuela - the soil is extremely rich and dimbas for vegetables, rice and tobacco are abundant. Its population has remained in the same place for over 50 years, harvesting crops twice a year(2). Here land is regularly inherited by a man's patrilineage and his absence does not imply loss of rights: land is reserved for him until his return. The Ngoni cannot therefore be said to be a people of shifting cultivators nor a people of stable cultivators, as they will be either depending on the circumstances.

In Miandica's area - a vast, sandy plain - abundance of land and its low intrinsic value make it unnecessary for the local authority to regulate land matters. Each person occupies the plot he likes, for any length of time, and abandons it when exhausted. After four or five years of cultivation, and sometimes less, it ceases to produce mauere and yields little maize; only cassava appears unaffected by the deterioration of the soil and keeps producing for twenty or even thirty years. The Ngoni of Miandica keep those cassava gardens which are nearer to their huts and cultivate gardens of maize and mauere further and further away; eventually it becomes necessary to move the village itself.(3)

(1) Except in the rare case of gardens suitable for beans, rice, or tobacco.
(2) Maize is sown twice a year but other crops are sown either in the dry season or in the rainy season.
(3) Miandica has already founded four different villages and it is expected that he shall soon have to move again.

The Ngoni of Mecuela, on the other hand, occupy much more fertile land and definite rights emerge out of its possession: land is frequently lent, it is inherited and rights over fallows are recognised. Mere occupation is not the recognised way of acquiring rights and one must speak to the village headman about one's intentions to cultivate such and such land.

Where land is transferred, rules do not differ from those already described for the Ngoni of Angónia. Loans are free and notice to quit the land should be given well in advance. When land is lent to members of the family its return is seldom asked for. Heirs to a borrower should ask the lender to renew the loan. Loans between tribes also take place.(1)

Land is not sold among the Ngoni. Only the Nyanja, compressed between lake and mountains,(2) sell land mainly in Messumba which is the most densely populated village in the Lake shore.(3)

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(1) If one has a Yao friend who has good land for example for beans (which require a richer soil) he will ask him for a plot of land.
(2) The Nyanja are fishermen and do not want to live anywhere but near the Lake. As a consequence their land is densely populated and also exhausted, producing no more than cassava. The Nyanja live on a diet of fish and cassava.
(3) The price paid is little more than nominal: 12 to 18 shillings for a small garden. The Government does not know about these sales.

Methods of cultivation owe nothing to European presence and are in fact more rudimentary than those practised by the Ngoni of Angónia.

The first time a garden is cultivated, maize is sown on flat ground, neither ridges nor mounds being made. A few months later, usually in January, the soil is brought by hoe nearer to the plants, which thus appear to be placed on elevations resembling ridges. These the Ngoni call lituhi.(1) The weeds which are thus carried with the soil are not thrown away and are left to rot; this is the only form of manure used. Once these ridges have been made, finger-millet is thrown at random both on the ridges (where the maize plants were sown a few months before) and on the furrows. In the following year maize is sown on what were previously the furrows and the soil is again drawn to the plants in the way described. This is done year after year. No other crop is interplanted and the garden is not put to a different use from that of the first year. If there are damp soils, the Ngoni also sow rice. Cultivation is done by hoes with long handles, different from the short-handled hoes of the Yao and Nyanja, who comment on the fact disparagingly.

The Ngoni of Niassa do not have as good a reputation as cultivators(2) as do the Yao. They admit themselves that they are less good agriculturists and justify themselves by saying that they have other interests, such as travelling and learning languages, whereas the Yao are too conservative to care for innovation.

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(1) Sing. matuhi.
(2) The opposite view was held by M. Read regarding the Ngoni of Nyasaland ('Native standards of living and African cultural change', suppt. to Africa, XI, 3, 1938).

APPENDIX F

The Cewa

Traditional political organisation

The Cewa, like all Maravi peoples, are described by authors as traditionally having a political organisation which was de-centralised, flexible and in fact rather weak and subject to destruction. The Cewa, like the Nsenga, Nyanja, Tonga, Tumbuka and others, were thus bound to suffer with particular acuteness from the attacks of the Ngoni[1] who were highly organised - and organised for war - and lead by a supreme chief who had the power (which he would exercise whenever the need arose) to call all men to the ranks.

The description of the Maravi organisation as a number of petty chiefdoms independent of each other probably needs some qualification. Caronga in Nyasaland and Undi in Portuguese East Africa were chiefs who enjoyed exclusive privileges, such as collecting certain tributes, vesting major chiefs in office and receiving periodical visits from their subjects. What is more, accounts available[2] on the organisation of Undi's Cewa of Mozambique clearly indicate that below the Undi there were at least two ranks of chiefs whose powers and privileges differed in scope and nature.

It is probably more true to say that, although paramount chiefs did exist (in Portuguese East Africa, the Undi), a material impossibility prevented such overlords from making their action felt in the vast areas which they governed, and that for this reason tributes paid to them expressed an allegiance which was more theoretical than real. As will be

(1) Except for Mwase of Kasungu who was never defeated and remained independent from the Ngoni, the Cewa were repeatedly defeated, looted and enslaved.
(2) See below pp. 322 <u>at seq</u>.

seen, local chiefs emerged who took an independent line in, for example, such an important issue as the Portuguese conquest. One of the half-castes of Macanga, the 'muzungo' Cinsinga, stood alone with his people against the men of commander Brito (the 'pacifier' of Angónia, as will be recalled), at a time when all other Cewa chiefs in Macanga had either voluntarily surrendered or been defeated (and often killed) by force of arms. Again, in Furancungo the memory of Cangulu is far more vivid than that of the paramount chief in whose name he ruled and it is obvious that his impact on the area was far more decisive.

Although the de facto powers held by various chiefs may confuse the issue, the broad picture appears to have been that major chiefs held their power from the Undi (who on his turn had received it from Caronga), whereas minor chiefs were given more restricted powers by important chiefs and not by Undi himself. Political power thus depended both on the rights comprised and on their source.

José Fernandes Junior,[1] known as the Ciphazi, an employee of the Companhia da Zambézia and a companion of commander Brito to whom many delicate missions were entrusted during the campaign of pacification of Macanga[2], wrote two precious reports on its potentates.[3] Since the information provided by Ciphazi is first-hand and otherwise unobtainable, it will probably be of interest that I refer to it in some detail.[4]

(1) The Portuguese Government decorated him and made him Cavaleiro da Ordem do Império Colonial Português. He died in 1965 in Chiuta, Macanga, at the approximate age of 93.
(2) In his own words, he was a spy for the Portuguese.
(3) Narração do distrito de Tete, 1956, unpublished, and Informação histórica, dateless, also unpublished. I also spoke to Ciphazi who was, however, too old and deaf to be able to be much help.
(4) The material is disorganised and diffuse but sense can be made of it without much difficulty. To it I am adding my own findings and, naturally, interpreting the material.

It appears, to start with, that a partition of jurisdiction eventually took place and that, either de jure or de facto, three figures came to dominate the political scene in Macanga, previously to the arrival of the Portuguese. Undi settled in Mount Maconcue, near the Capoche river[1], and his jurisdiction spread to undefined areas - his authority being the weaker the more distant the area was from his headquarters. A second main chief was Cangula, with whom some understanding must have been arrived at, since he does not appear to have recognised Undi's authority[2]; he was, it seems, the supreme ruler in the area of Bene[3] and is well-remembered in Furancungo to the present day. Finally, the 'chiefs of Macanga' (Cinsinga, at the time of the Portuguese campaign) lived much further south, around Casula and Chiuta, not far from Tete.

Both Cangulu and Undi accepted Portuguese domination without fighting. It was only Cinsinga who put up any serious opposition and he was defeated perhaps only because he was betrayed by smaller chiefs under him. It is on the 'chiefs of Macanga' that Ciphazi, himself a resident in the area, has more to say.

The first to become 'chief of Macanga' was an ancestor of Cinsinga, called Cicuncura or Catama or Dombo, an half-caste considered to be a Portuguese. He came to be known as 'the conqueror of Macanga' and was one of Undi's followers who helped him most to settle in the new territory. The Portuguese government recognised either Cicuncura himself or one of his descendants and made him capitão-mor. During the 19th century the Pereira family - as the Portuguese name of the chiefs of Macanga was -

(1) The Capoche separates the circunscrições of Macanga and Maravia (see map on p. 196).
(2) 'How do you want to rule if you came from another country?'- this, according to ~~my~~ informants, was Cangulu's attitude.
(3) One of the northern administrative posts in the circunscrição of Macanga - in fact quite near the area dominated by the Undi. The Capoche river, which divides the circunscrições of Macanga and Maravia, was probably the limit between Cangulu's lands and Undi's country. (see map on p. 196).

gave as much trouble to the government as the Cruz family (another gang of cruel half-castes) in Massangano and both engaged in wars against the government which lasted for several generations. The exodus of Africans from Macanga is said in one administrative report to have started at that time.

As one can extract from the information provided by Ciphazi some principles regarding Cewa political life which are presumably applicable to the remainder of the vast area occupied by them, I shall look into his reports in some detail.

Ciphazi does not hesitate in grouping the chiefs of Chiuta at the time of commander Brito's campaigns into 'chiefs of the first class' and 'chiefs of the second class'. Of the chiefs of the first class[1] Biui was the most important, in spite of the fact that he had been appointed not by Undi but by Cicuncura who had 'conquered Macanga at Undi's request'. Biui, we are told, was granted wide powers to appoint chiefs and this feature he shared with other big chiefs who were always granted the power to nominate minor ambiri.[2] What seems less common is the fact that Biui was given the power to move with his people from one area to another without becoming subject to the chief into whose area he moved and being merely bound to respect his rights. Ciphazi suggests that this privilege was due to the fact that Biui was made responsible for the maintenance of peace; in other words he had to make sure that the conquered peoples did not rebel. Not only did Biui move about freely with his people, but he could, while temporarily occupying another chief's country, hold those ceremonies (nyau and cinamwali) which gave rise to the collection of fees; again, he was not bound to give any part of them or of the tributes owed to him to the owner of the land.

(1) This classification refers to chiefs below Undi and Cicuncura, and perhaps Canguru too.
(2) Important chiefs were known as mafumu, petty chiefs as ambiri (sing. mbiri).

Ciphazi states that, although the area ruled by Biui was a very large one, his office was not hereditary and on his death Cicuncura, the 'chief of Macanga' made a fresh choice. We are left in doubt whether this was so because Biui had not been vested in office by Undi (but by his second-in-command) or whether, as seems more probable, given a certain amount of unrest on the part of the local peoples, 'the conqueror of Macanga' wanted to ensure that the new man was as capable of preventing insurrection as the former one had been. With the arrival of the Portuguese the office of Biui became hereditary, as the Portuguese did not know, and would probably not have cared even if they knew, of such customary distinctions.

The second chief mentioned by Ciphazi as belonging to the first category of chiefs is Cimbalangondo, whose power was received directly from Undi of whom he was a relative. This chief too received from Undi the power to settle with his people in whatever country he chose,'even if the tribe was not his own, provided it was within Undi's country'. Wherever Cimbalangondo settled, the owner of the land could not exact from him taxes of any sort; Cimbalangondo's own people and others who might join him later paid tribute to him and to no other chief.

Ciphazi adds that Cimbalangondo had the right to kill elephants and to retain the ivory and sell it where he wished, without having to fear Undi. He also addressed Undi directly, requiring no intermediate person. Later, when Cicuncura, chief of Macanga, occupied Chiuta, Cimbalangondo had to obey him 'out of fear' and only to him was he forced to pay whatever he was asked for as tribute.

It is clear from this account that to owe allegiance to Undi involved fewer obligations than to owe it to the tyrannical overlords of Macanga. And we can also see how allegiances shifted as time went on. In fact, Ciphazi states the position clearly when he writes 'with Cicuncura's conquest and the inadequacy of the powers of the Undi, (who did not have enough strength to protect his subjects) the latter's prestige declined more and more; lately his ability to receive tributes from his vast

territory did not go beyond those chiefs who lived near him. In this way Cicuncura came to be recognised as supreme authority because his violence and arbitrary actions were much feared'.

The third main chief of Macanga was Cangururu who was a remote relative of Undi. Although he enjoyed 'territorial independence' he had to show allegiance to Undi by visiting him from time to time and take him presents (tribute?) in ivory and slaves. Unlike the two chiefs previously discussed, he did not enjoy the prerogative of settling in other chief's countries in the way described.

While discussing the last big chief of Chiuta, Canhama, the author provides his readers with a good illustration of the hierarchy prevailing among the chiefs of the area.(1) Canhama, we are told, held authority over such big chiefs as Capalautse, Sachirire, Gundamuala and other mafumu of lower status;(2) on his turn, Canhama was under the authority of Biui, because the latter had received his power from the 'conqueror of Macanga', Cicuncura. Canhama was entitled to fees from nyau and cinamwali, to objects lost in the bush and to fines arising from crimes and accidents, but 'an important part' of this revenue he took to Biui (who would in turn take it to Cicuncura), while keeping the remainder for himself.

There is no point in referring in detail to the minor chiefs of Chiuta. Petty chiefs had no direct connection with their overlord and held powers which were granted to them by intermediate chiefs. Their powers of taxation were limited: to collect the revenue arising from certain ceremonies and no more. Under no circumstances could minor chiefs keep for themselves the ivory of animals killed on their land - whereas

(1) Similarly in Canguru area. According to my informants he appointed Messeriza ('and for this reason Messeriza was the most important chief of the area'); realising that the region was still too vast to be ruled by two men, Canguru told his deputy to nominate other chiefs. Mulirima, Casulira, Campumula or Cissamba and others were thus made chiefs.
(2) We are not, however, told in what consisted such authority.

big chiefs (although bound to give some part of it to Undi or Cicuncura) were allowed to sell it for their own benefit. We have also seen that in all cases but one (that of Biui) big chiefs were relatives, even if only remote ones, of Undi, whereas no minor chief appears from the reports to have been so related. Finally, and obviously, bigger chiefs dominated larger areas and ruled over more people than was the case with unimportant ambiri.

Information on how these various chiefdoms came to be created is far from complete but a few conclusions might be arrived at. The first lands distributed by Undi were given to those of his followers who helped him the most to settle in the new area, and office passed on to a man's successor for many generations. Minor chiefs, on the other hand, were created ad hoc, for specific reasons. Ciphazi tells us that a common basis for granting a man a piece of land of a few square kilometers (together with rights to collect small tributes) was to muffle his discontent. Whenever a chief felt that he had decided a law-suit unfairly, or had failed to pay a hunter his due, or in any way had committed an injustice, he would enter into an agreement with his subject to give him a piece of land and a few rights, rather than have him appeal to Undi or Cicuncura.

At times, a ground for attributing to a man the privileges of chieftainship was to have his services as informer[1]. Finally, during the Portuguese campaigns, at least one chief was appointed to ensure that the inhabitants of the area around Chiuta did not recognise the Portuguese Government of Tete[2].

(1) Zangaia or Mpondandoe was made chief in order to report on any attempts at rebellion against the 'chief of Macanga' on the part of the big chiefs of Chiuta.
(2) Nuncachumbo - Meza.

Recognition of chiefs by the Portuguese authorities

As elsewhere, and generally speaking, African chiefs were recognised when they did not offer any serious resistance to the colonial power.

Ciphazi tells us how in 1901 he accompanied commander Brito from chiefdom to chiefdom enquiring whether the chiefs were willing to surrender to the Portuguese Crown. Undi, who lived on top of Mt. Mbazi, sent his son Cincombero[1] with the customary presents signifying allegiance. He ~~son~~ was told that from then on 'the land and its inhabitants became subject to the Portuguese government and Undi would be no more than a chief directing his people to obey Portuguese orders, whether he wanted it or not'. Undi remained in Mozambique until 1935 when he came into conflict with the Portuguese authorities and left with his people for Northern Rhodesia. Another main chief, Canguru, also agreed to submit to the sovereignty of Portugal, and so did Tembue of the Luia river, a close relative of Undi.

The chiefs just referred to are those of the North of Macanga and Maravia, occupying areas which now belong to the administrative posts of Bene (Macanga) and Vila Vasco da Gama (Marávia). The chiefs around Furancungo, further south, took a different standing. Ciphazi describes how eight chiefs gathered together with their people in the caves of the rocky hills of Furancungo. After resisting for one day they were captured and four of them sentenced to death. The following day, village headmen were chosen who, according to customary law, were direct successors of the chiefs who had been executed, and were reminded of the fate which awaited 'traitors to the government'.

A few other chiefs throughout Cewaland did not surrender but the most fierce resistance came from Cinsinga, Luiz Caetano Pereira as his Portugusse

(1) He also sent a message to the effect that he was too old and could not himself come down the mountain.

name was, a descendant of Cicuncura, the 'conqueror of Macanga'. In 1901 attempts had been made to negotiate peace with him. The director of the Companhia da Zambézia, the arrendatária of the prazo, had offered to make him 'the first auxiliary of the company', to recognise his right to exact free labour from all his subjects and to hunt freely and sell his ivory where he wished; he would also be exempted from paying taxes for his numerous wives and would receive 60,000 réis and a percentage in all business he carried out for the company.(1)

By 1902 it had become obvious that Cinsinga had no intention of abiding by the contract.(2) Commander Brito came to know that he was preparing for war and gathered a force estimated at 6,000 men, mainly Ngoni from Angónia. Either because the lesser chiefs of Macanga were tired of the autocratic rule of the Pereira family, or because they were expecting to promote their own interests while supporting the Portuguese cause, the history of events in Chiuta area is one of an enormous betrayal. Chiefs, big and small, all turned up to declare that they were ready to obey the Portuguese government provided it destroyed the absolute power of the 'chief of Macanga'. The Portuguese were eventually told of Cinsinga's attempt to flee into exile to Nyasaland and he was caught and killed.

With the defeat of Mpeseni in Northern Rhodesia and Cinsinga in Macanga, the message was brought home to the Cewa of Marávia that the war against the European was a hopeless war. Carl Wiese, as sub-concessionaire of the Companhia da Zambézia, was able to arrive in Marávia on his white donkey and call it his from the Luia river to the Zumbo without any unpleasant incidents.

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(1) The generosity of the offer shows how feared Cinsinga was.
(2) One of his predecessors in office, Mendoza, had decimated a Portuguese garrison and had been able to go scot free.

Nowadays the almost universal complaint on the part of Portuguese administrative officers is that traditional authorities lack prestige. In the post of Chicoa[1], for example, Africans were said 'to show the greatest reluctance for being appointed chiefs'. One can easily imagine how disruptive to the role of traditional headman - a prototype of the good pater-familias to his people - the demands for labour were. In one instance - also in Chicoa - villagers, discontented with the stand their village headmen had taken with regard to recruitment, managed to become registered with another headman but in fact remained in the same village- thus being subordinated to neither authority, a situation hardly conducive to the prestige of any headman.[2]

Again, the new order brought to African authorities many duties but little income. Of the three existing categories - regedores (chiefs), chefes de grupo de povoações (group headmen) and chefes de povoação (village headmen) - only the first is paid a regular salary. A regedor now receives £6. 17. 6d.[3] a month and a percentage which cannot exceed 2% of the taxes he collects.[4] The other two categories receive no salary but only a small percentage of the taxes collected[5]; a village headman with less than 50 taxpayers is not entitled to any percentage, although administrative officers tend to pay it. Uniforms are usually given to village headmen and group headmen as compensation for their troubles, although, again, strictly speaking, they are not entitled to them.

(1) On the southern part of circunscrição of Maravia, inhabited mainly Nhúngue from Tete, but also by a few Cewa.
(2) Report by the D.O. of Chicoa, 1956.
(3) Until at least 1943 he received £6. 5s. Od. per year and had a wide range of duties, among which that of attending monthly meetings at administrative headquarters. As one report points out, some village headmen live at four days' distance from Furancungo.
(4) Africans now pay the same tax (imposto domiciliário) as Europeans. In Macanga it amounts to £1. 14s. Od. per year.
(5) A village headman has only 1% of each tax collected; a group headman 0.5 %. A chief receives 2% because her performs simultaneously three functions (as village headman he receives 1%, as group headman 0.5% and as chief also 0.5%).

Deprived of their traditional powers and paupers in terms of the new economy, it is not surprising that African authorities lack prestige. Attempts are now being made to enhance their status but results so far are anything but spectacular.

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