

**LAND POLICY REFORM: THE ROLE OF  
LAND MARKETS AND WOMEN'S  
LAND RIGHTS IN MALAWI**

**By**

**Stein Holden, Randi Kaarhus  
and Rodney Lunduka**

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Department of International Environment and Development Studies, Noragric  
Norwegian University of Life Sciences (UMB)

P.O. Box 5003

N-1432 Aas

Norway

Tel.: +47 64 96 52 00

Fax: +47 64 96 52 01

Internet: <http://www.umb.no/noragric>

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## SUMMARY

This study seeks to give an updated presentation and discussion of the on-going land policy reform process in Malawi, a country facing increasing land scarcity and food insecurity for the large rural population. The land reform includes formalisation of customary land rights as private land rights in customary estates. In this context we seek to analyse the implications of the reforms in a setting with emerging land markets, making a clear distinction between land rental and land sales markets as their efficiency, equity and sustainability effects may differ. Furthermore we assess how the land reform may affect women's land rights with special emphasis on the distinction between matrilineal and patrilineal inheritance systems that coexist in Malawi. The land reform process is put in a historical context. We look at the different elements of the suggested reforms and assess their theoretical, political and empirical basis. Our main findings are summarised below.

If formalisation of land rights and land markets shall be successful it requires careful planning and implementation, and use of methods that can minimise the transaction costs while, at the same time, enhancing the benefits in terms of efficiency and equity-enhancing and poverty-reducing effects. The approach used so far in Malawi is far from such an approach. Piece-meal approaches to land formalisation are very costly and affordable only by the wealthy who may take advantage of this at the expense of the poor. It should be possible to learn from experiences with low-cost registration and certification in other countries, like in Ethiopia. However, this may not be sufficient to design an appropriate reform in Malawi. Good empirical research would provide a much stronger basis for a well-designed pro-poor land reform.

Our brief village survey revealed that active land rental markets are emerging in central and southern Malawi in response to increasing land scarcity, the skewed distribution of land, and imperfections in non-land factor markets. Although total landlessness is still at a very low level (3%) in Malawi, many near landless households attempt to access extra land through the land rental market where fixed-rent short-term contracts appear to dominate. Sharecropping may still be practiced on tobacco estates, but new studies should be implemented to assess current tenancy arrangements at tobacco estates and their efficiency and welfare implications.

There has been very little research on land markets in Malawi, including rental as well as sales markets. Land rental markets may provide an important opportunity to access land for landless and land-poor households. Careful empirical studies are required to assess the efficiency of current informal land rental markets and the efficiency enhancing potential of more formal land rental markets. We contest the view that formal land markets necessarily are better than informal land markets from an efficiency- as well as an equity-enhancing and poverty-reduction-perspective. There should, however, be considerable room for reducing the transaction costs in the formal land sales market as we found these to be very high in Malawi.

How will this reform affect women's land rights when new policies and laws encounter the local norms and principles of both matrilineal and patrilineal groups in different parts of Malawi? A goal of the new Land Policy is to ensure tenure security and equitable access to land. How can this be achieved for both women and men – in a situation of increasing scarcity, pressure and competition for land? This is a big challenge facing Malawi today. A better research-based understanding is required concerning the dynamics of matrilineal rules and practices under current economic conditions and changing policies.

The present study indicates that the rights of women may become increasingly marginalised, not only in the informal family and lineage negotiations over rights and access to land, but also in the

bargaining processes related to the implementation of land reform policies and programmes. In order to counteract these tendencies, special mechanisms that protect women against direct discrimination and more indirect processes of marginalisation should be established in Malawi. Donors and NGOs may play important roles to protect the land rights of women and other vulnerable groups, like AIDS victims, by pushing for and supporting pro-poor elements of the reform.

There was a pilot land reform program implemented in Malawi, the Lilongwe Land Development Programme (LLDP). The objective of LLDP was to ascertain and record individual rights to family units in land, but it was not made clear what these “family units” were. The implementation revealed a lot of difficulties in formalising land rights in a matrilineal society, and a clear gender bias in the implementation emerged, favouring men. We came across no good recent impact assessment studies for the LLDP program. A carefully designed survey and analysis may still be implemented here to learn more from this experiment. The findings could be important for finding solutions to the growing tenure insecurity and increasing intra-family conflicts that appear with increasing land scarcity, making it impossible to continue to share land equally among all the children.

One of the basic arguments for formalising land rights is to improve access to credit. However, it is not realistic to believe that land registration and land titling quickly leads to better access to credit for poor rural households. While this approach may have potential in urban and peri-urban settings, there may be a long way to go in rural settings. The evidence from Malawi indicates that credit access is restricted also for smaller estates. Many of them have gone out of business, casting doubts about the superiority of large farm sizes after the removal of policies that favoured large farms.

The distribution of land in Malawi is inequitable and there is a high demand for land among the land-poor, while at the same time estate land on many estates is poorly utilised. One of the priorities of the new land reform is to redistribute the poorly utilised land to land-poor households. The land resettlement project that is funded by the World Bank has the potential as a win-win solution in Malawi but there is a risk that it can enhance social conflicts. Great care is needed for such resettlement projects to succeed and to prevent that severe disputes occur as a result. Protest reactions may come from neighbouring villages to the estates that are converted to new settlements if these neighbouring villages receive few or no benefits, or even lose employment or resource access that they used to have. Claims and envy may then contribute to conflicts and cause social exclusion of the newcomers. Strengthening local administrations and providing training to local staff is crucial when the resettlement activity is scaled up as planned. Provision of basic services, like safe drinking water, health, school, and market access, is also important for these settlements to succeed.

The role of the traditional authorities (chiefs) in relation the new land reform was a hot topic in the country in the debates on the new policy during the fieldwork of the study team, and there were negotiations about the future roles of the traditional authorities. The establishment of local land committees and land tribunals for conflict resolution are important to create more democratic and transparent local management of land resources. Based on a protest by “the chiefs” against the apparent removal of their power over land, they have been given the chairman positions in the local land administration as well as in the land tribunals to be established. It remains to be seen how this will work. The training of land clerks for local land administrations and establishment of proper written record should, however, contribute to a more transparent system. Training of all committee members will be essential for the system to work.

The land reform needs to go hand in hand with other decentralisation initiatives, and needs to be accompanied with the necessary resources to establish efficient local administrations. Donor support may be crucial to find sufficient resources for this. Such support also seems essential to ensure that

the land reform can be designed and implemented in a pro-poor way. NGOs are already active in the local debate and can play a key role in dissemination of information and contribute to make the reform pro-poor. Without proper implementation there is a high risk that the powerful will exploit the situation at the cost of the poor and the most vulnerable in Malawi today.

## ACRONYMS & ABBREVIATIONS

<b>ADB</b>	African Development Bank
<b>ADMARC</b>	Agriculture Development and Marketing Corporation
<b>CBRLDP</b>	Community-Based Rural Land Development Programme
<b>CDD</b>	Community-Driven Development
<b>CISANET</b>	Civil Society Agriculture Network
<b>CLUS</b>	Customary Land Utilization Studies
<b>DFID</b>	Department of International Development
<b>ELUS</b>	Estate Land Utilization Studies
<b>EU</b>	European Union
<b>FAO</b>	Food and Agriculture Organisation
<b>GIS</b>	Geographic Information Systems
<b>GDP</b>	Gross Domestic Product
<b>GOM</b>	Government of Malawi
<b>GVLТ</b>	Group Village Land Tribunal
<b>HLCLEP</b>	High-Level Commission on the Legal Empowerment of the Poor
<b>IDA</b>	International Development Association
<b>IIRD</b>	Institute of Integrated Rural Development
<b>IMF</b>	International Monetary Fund
<b>LLDP</b>	Lilongwe Land Development Programme
<b>MASAF</b>	Malawi Social Action Fund
<b>MCP</b>	Malawi Congress Party
<b>MLPPS</b>	Ministry of Lands, Physical Planning and Surveys
<b>MoA</b>	Ministry of Agriculture
<b>MK</b>	Malawian Kwacha
<b>MPRS</b>	Malawi Poverty Reduction Strategy
<b>NGO</b>	Non Governmental Organization
<b>NORAGRIC</b>	Department of International Environment and Development Studies (UMB)
<b>NORAD</b>	Norwegian Agency for Development Cooperation
<b>NRC</b>	Natural Resources College
<b>PCILRP</b>	Presidential Commission of Inquiry on Land Policy Reform
<b>PLUS</b>	Public Land Utilization Studies
<b>TA</b>	Traditional Authority
<b>TALT</b>	Traditional Authority Land Tribunal
<b>TCC</b>	Tobacco Control Commission
<b>TOR</b>	Terms of Reference
<b>UNDP</b>	United Nations Development Programme
<b>VLT</b>	Village Land Tribunal
<b>WB</b>	World Bank

## **PREFACE AND ACKNOWLEDGEMENTS**

The study presented in this report was made possible and carried out as an assignment based on a request from NORAD under the current Framework agreement with UMB/Noragric. Though land policy reform is at present not a focus area in the bilateral development cooperation between Malawi and Norway, at a more general level there is considerable debate on the inter-relationships and how to combine rights-based approaches and dominant models of economic growth in relation to land ownership and land use in developing countries. The present study is an interdisciplinary-based contribution in this regard. Furthermore, the Norwegian government has over the last years taken initiatives to bring the issue of formalisation of land rights up on the agenda of international development debate. This report presents empirical data and discussion points that can also be seen as inputs to these debates. As authors of this report, we do appreciate that NORAD was willing to fund this study.

The study and the report presented here are, in part, based on a three-weeks visit to Malawi in March 2006 by the research team who are also the authors of this report. The stay in Malawi made it possible to make several field visits in rural areas, and carry out group interviews in villages that both formerly and currently were targeted for land policy reform programmes. The team very much appreciates that people in the villages of Mpingira and Chibungo and the settlements of Kalungo and Mijale were willing to share their time, knowledge and experiences with us, providing an essential part of the empirical information we discuss in this report. Summary accounts of the village interviews are found in Annex II. We want to take this opportunity to acknowledge the value of the local people's inputs to this report.

The visit to Malawi also provided the team with the possibility to meet, interview and discuss land reform issues with a number of Malawian officials, researchers and academics, project staff, and agricultural extension staff. A list of people met and consulted is presented below. To all the people listed we are deeply grateful for the valuable information provided, and we would hereby like to acknowledge their contributions to the team's exploratory research process. In this context we should, however, mention the unique information provided by Dr. S. Khaila, Chairman of the Special Commission on Land Reform, Prof. Paul Kishindo, Vice Chairman of the Presidential Commission of Inquiry on Land Policy Reform, Mr Chicosa Silungwe in Malawi Law Commission, and visiting anthropologist Pauline Peters in Zomba.

The assistance and support provided by the Principal of Bunda College, Professor G.Y. Kanyama-Phiri, and Professor James Banda at the Bunda College Programme Office is highly appreciated by the team. Finally we shall acknowledge the unwavering support and valuable assistance provided by Mr Collins Moyo, Director of the Land Policy unit in the Ministry of Lands, Physical Planning and Surveys in Lilongwe.

In the end, however, the usual disclaimers apply, and the research team takes full responsibility for any errors, misinterpretations or controversial statements found in this report.

## LIST OF PEOPLE CONSULTED IN THE STUDY

Prof G. Kanyama Phiri	Principal Bunda College
Prof J. Banda	Bunda College
Dr K. Wiyo	Director – Center for Agricultural Research and Development (CARD); Bunda College
Dr S. Khaila	Chairman, Special Commission on Land Reform; Bunda College
Dr Mataya	Presidential Commission of Inquiry on Land Policy Reform; Bunda College
Dr Ng’ong’ola	Consultant on land issues; Bunda College
Mr Davie Mkwambisi	Lecturer Bunda College
Mr Collins Moyo	Director of Policy and Planning, Ministry of Land
Mr Bojazi Gwedeza	Accountant, World Bank Project
Mr F.S. Manjakono	Commissioner of Land
Mr I. Kapito	Assistant Commissioner of Land
Mrs Lucy Horeya	Monitoring and evaluation specialist, World Bank project
Mr Edson K Mphande	Director Policy and Planning, Ministry of Gender
Mr Henry Sapuwa	Ministry of Gender
Dr Naomi Ngwira	Advisor, Ministry of Finance
Dr Rexford Ahene	Private consultant
Mr Paul Jere	Private consultant
Dr Hardwick Tchale	Agricultural Economist, World Bank
Dr Erling Berge	Sociologist (Trondheim/Zomba)
Dr Pauline Peters	Anthropologist (Harvard/Chancellor College, Zomba)
Prof Paul Kishindo	Professor of Rural Sociology, Chancellor College, Zomba
Mr Kambwewa	PhD student in Sociology, Chancellor College
Mr S. Carr	Private farmer and former World Bank official
Mr Kondani Chinangwa	Magistrate, Mulanje District
Mr Robert Kafakoma	Civil society representative, Chair, Landnet Malawi
Mr William Chadza	Civil society representative, former Chair, Landnet Malawi
Mr Chikosa Silungwe	Official, Malawi Law Commission
Mr Thomas Tiedeman	Project Manager, EU, Lilongwe
Mr Martin Banda	Project Manager, EU, Lilongwe
TA Likoswe	Traditional Authority, District of Chiradzulu
TA Kwataine	Traditional Authority, District of Ntcheu

### **Rural Communities**

Mpingira Village (Mpingu EPA, Lilongwe)  
Chibungo Village ( Mpingu EPA, Lilongwe)  
Kalungu settlement group (Machinga)  
Mijale settlement group (Machinga)  
Likoswe Village (Chiradzulu)



## 1. INTRODUCTION

This study seeks to give an updated presentation and discussion of the on-going land policy reform process in Malawi. A basic assumption in our study is that a major problem in present-day Malawi is the shortage of agricultural land relative to the rural population who – still – rely on access to land for their livelihoods and subsistence. Starting from this assumption we will focus on two specific themes of considerable interest:

- To what extent do *land markets* exist and how do they operate in present-day Malawi? What determines their existence and what implications do they have for rural households and welfare distribution, and what are their implications for land use efficiency, land management and investment? On this background: What will be the impact of current policy changes on land rental and sales markets and their role in poverty reduction?
- What is the present situation with regard to *women's land rights* in Malawi? On the basis on available information on land and gender: What is the basis for women's land rights in Malawi, and what are the current trends of change? On this background: How are current land reform initiatives likely to influence women's access to and control of land?

The on-going land policy reform process and the current land tenure challenges in Malawi have to be analysed not only in the context of the present situation in the country, but also in the context of more long-term historical processes – dating back at least to the 19<sup>th</sup> century. Present-day land tenure in Malawi draws on partly modified colonial land legislation, while rural practices are based on a complex of matrilineal and patrilineal rules and norms, which are interpreted and adapted to situations of increasing – though varying – pressure on land in different parts of the country. This complex situation with regard to land tenure, in combination with widespread and deep poverty, means that the Malawian case provides a challenging context for an analysis of policy reforms, land market practices, and gender dimensions of land rights – focusing more specifically on women's rights to land.

Current policy reforms and land tenure-related challenges in Malawi are inserted into a global context of increasing globalisation and market liberalisation, and linked up with international policy trends and development-related initiatives. Thus, land reform initiatives in Malawi should also be discussed with reference to international trends and debates concerning land tenure security and the formalisation of land rights. But in this report we go beyond that and confront various assumptions that land reforms build on with empirical evidence from Malawi and other countries where relevant. This implies that we take a closer look at the rationale of land markets, including land rental and land sales markets, and their efficiency, equity and sustainability implications.

Gender perspectives are also central to this report. Questions concerning land and gender, and women's land rights in particular, have often been missing or marginal in discussions of land reform in Malawi. When land and gender is discussed, patrilineal principles and practices are usually taken to represent the “model” case. Matrilineal rules and practices tend to be treated as special, problematic and marginal, or as out-of-date remnants from a process of historical evolution. Still matrilineal groups constitute a majority in the most densely populated Central and Southern Regions of Malawi.

The authors of this report hope that the approaches we use, the empirical examples and analyses presented here may provide both useful and relevant inputs to current debates on land tenure and to land policy reform implementation in Malawi. However, as authors of the report we will already in this introduction point to the – still – fragmented and incomplete knowledge base on the issues we

address. Our study cannot fill the knowledge gap in this area. On the one hand we acknowledge the limitations of our own data with regard both to representativeness and depth (as acquired through more long-term fieldwork). Still we believe we can give an overview of the current situation as to policy reform initiatives and point out significant trends and challenges. We will discuss what are the dominant assumptions and what is the empirical basis for current problem-formulations and reform initiatives, indicate challenges for planned interventions, and delineate needs for further research. However, we will also point to the need for more basic research on the issues addressed here.

## 1.1. THE INTERNATIONAL CONTEXT AND CURRENT DEBATES ON LAND

This is not the place to review – or even summarise – the extensive international debate on land rights, property, land policy reform and formalisation. However, a few central issues of particular relevance for the present study should be mentioned. Overall, there is considerable agreement that land is – still – a vital resource for rural livelihoods in developing countries (Ik Dahl et al. 2005). However, how land can be used as a resource to reduce poverty, and at the same time strengthen poor people's rights in diverse local contexts in different developing countries, is a much more contested issue. Thus different perspectives on *rights, property, land policy reform*, and different views on the *formalisation* of land rights as a way out of poverty for rural people are at present central issues of debate on the international development agenda.

Not only have the World Bank and the Peruvian economist Hernando de Soto been key actors in putting these issues high on the agenda. The Norwegian Government has also contributed to further debates – and possibly research – through the initiative taken by the Ministry of Foreign Affairs in 2005 to establish an international commission – called the *High Level Commission on Legal Empowerment of the Poor* – to work on these issues. The problem definition underlying the establishment of this Commission has been formulated in the following way by the former Norwegian Minister of Development Cooperation (and present Commission member) Hilde F. Johnson:

“Millions, if not billions of poor people are without security for their assets. They can be taken from them any day, by elites, whether political, economic or business-based... Just as many poor people are dependent on land, on access to land, security for land, the possibility to cultivate their land, and the possibility to use their land as collateral” (Johnson 2006:9).

This statement points to the question of security of land tenure in post-colonial states, and to the entry of poor people's land into the market – through the use of land as collateral for loans. The concept of *secure land rights* is a main issue in current debates, though local people in many cases will not perceive of their non-formalised land rights as “insecure”. In this context, it is also argued that a better understanding is required “of the complexity of multiple, informal tenures within the ‘extra-legal’ sector, in all their their diversity”, and that we must “acknowledge at the outset that they are fundamentally different to the individualised, exclusive, private property systems of Western capitalism” (Kingwill et al. 2006:2).

A central question of contention in current debates is: What is the relationship between secure land rights and formalisation of (individual) property rights? In addressing this question, both human-rights perspectives (Ik Dahl et al. 2005) and economic efficiency considerations are drawn into the debate. In the World Bank report *Land Policies of Growth and Poverty Reduction* (World Bank 2003), the concept of ‘secure property rights’ is used throughout instead of ‘formalised rights’.

Secure rights in the World Bank terminology refers to clearly defined rights, which can be enforced at low cost, and thereby instil confidence in economic agents. It is, however, argued that the costs of “full enforcement” of secure property rights through the formalisation of individual titles may not always be optimal in economic terms (World Bank 2003:34) In this perspective, then, secure rights are seen as a means towards an economic growth that in turn will lead to poverty reduction. In terms of economic efficiency, the World Bank report argues that the costs of formalisation may be relatively high if investments in institutional and technical infrastructure, demarcation etc., are taken into account.

Another key reference in the international debates on formalisation is Hernando de Soto's book *The mystery of capital* (de Soto 2000). The central argument in his book is that poor people remain poor because they lack access to formal property rights. When poor people's rights to their assets are formalised, they will be able to use e.g. land titles to obtain loans on collateral security in financial market (banks). These loans can be used to make productive investments, which in turn will lead to economic growth and poverty reduction. These assertions have been met with several counterarguments. On the one hand, it has been questioned whether banks will accept smallholders' land titles as collaterals for loans.<sup>1</sup> On the other hand, it has been argued that poor people in situations of high vulnerability, when using land titles to acquire loans (e.g. to cover medical costs in desperate situations caused by AIDS) may end up losing their land if they are not able to repay the loans.

The 2003 World Bank report seems to establish a direct link between poverty reduction and land markets when it states as a point of departure that: “Access to land and *the ability to exchange it with others* and to use it effectively are of great importance for poverty reduction” (World Bank 2003:1, our emphasis). To what extent formalisation of land rights facilitates land market transactions that benefit the poor is, however, an empirical question. There has been a lot of research on how rural rental markets for land function, like the vast theoretical and empirical literature on sharecropping efficiency in development economics. The debate goes back to Adam Smith and Alfred Marshall who viewed sharecropping as an institutional arrangement that caused inefficiency. More recently alternative theories have been forwarded that put sharecropping into a much more favourable perspective (Cheung 1969, Stiglitz 1974), and the empirical literature gives mixed evidences (e.g. Shaban 1987, Otsuka 2002). Both efficiency and equity implications of such markets are complex and vary depending on basic characteristics of the economies, the distribution of resources and power, cultural norms and the policies in place.

So far there has been little research on the emerging land markets in Africa but new research is currently under way in several densely populated African countries. One basic finding that comes out of this literature is that land rental markets may be better for the poor than land sales markets in terms of increasing the poor's access to land. Land sales markets are more likely to favour the rich and lead to a more skewed land distribution over time. More research is clearly needed to assess how expanding land market transactions affect different groups of rural men and women – who are not all equally poor. In the present report we will therefore specifically address the issue of how rural land markets now function in Malawi.

A 2002 report on opportunities and obstacles to women's land access in South Africa points out that few land reform policies and implementation systems are sensitive to gender issues (Cross & Hornby

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<sup>1</sup> In Mozambique, for instance, the Bank Association has made a public statement declaring that land will not be accepted as collateral. Cf. Ikdahl, I., Hellum, A., Kaarhus, R., Benjaminsen, T. A. & Kameri-Mbote, P. (2005). *Human rights, formalisation and women's land rights in southern and eastern Africa*. Studies in Women's Law nr. 57. Oslo, Insitute of Women's Law, University of Oslo.

2002). In practice it is also shown that land reform policies and projects tend to bring limited benefits to poor rural women. Furthermore, the report points to the limited number of case studies giving input on how to approach the issue of gender in land reform projects and processes.

In fact, there seems to be considerable consensus that formalisation of land rights in the form of individual titling, or privatisation of land, in an African context is likely to affect women negatively (Ikdhahl et al. 2005; Lastarria-Cornhiel 1997). Recently there have been explicit attempts at strengthening women's rights to land in land certification processes in some Ethiopian regions (. It is too early to assess the success of these attempts. An influential perspective which supports this view is that the formalisation of rights usually will convert, standardise and change the nature of rights in a way that tends to exclude the weaker rights and the weaker holders of competing claims (Ikdhahl et al. 2005; Kingwill et al. 2006). It is also argued that "the transformation of African tenure systems have tended to further constrain women's already tenuous access to land while other groups (community leaders and male household heads) have been able to strengthen theirs" (Razavi 2006:62).

The 2003 World Bank report on land policies points to a common failure, in studies as well as programme planning, to analyse the internal dynamics of households in terms of intra-household resource allocation and negotiation. The result has been a neglect of women's land rights (World Bank 2003:57-58). In the present report we will go beyond intra-household dynamics to include both lineage and village/community levels in addressing the gendered aspects of land in Malawi. We will also be focusing on women's land rights in groups where access to land has traditionally been through the female line. That is, we focus on the regions in Malawi where women's access and rights to land would not traditionally be characterised as "weak" or "tenuous". Which is, we believe, an interesting point of departure.

## **1.2. BRIEF BACKGROUND: LIVELIHOODS, LAND AND AGRICULTURE IN MALAWI**

With a total estimated population of more than 12 million and a total area of 118 484 km<sup>2</sup> (of which the land area amounts to 94 276 km<sup>2</sup>) Malawi is one of the more densely populated countries in Sub-Saharan Africa. Average population density (based on the land area) is now close to 130 persons per km<sup>2</sup>. Within the national boundaries there is, however, considerable regional variation both with regard to population density, urbanisation and ethnic composition.

In the Northern region, average population density is around 53 per km<sup>2</sup>. In the Central Region where the Capital City of Lilongwe is located, population density is higher; approximately 140 per km<sup>2</sup>. While in the Southern Region, where Blantyre is a major commercial city, population density is close to 174 per km<sup>2</sup>.<sup>2</sup> These regional variations are further accentuated if we look at average farm sizes, as reported in the recent policy paper *Road Map on Agriculture Development in Malawi* (MoA 2005). Average farm size is here reported to be 10-15 ha in the Northern Region, 5-10 ha in the Central Region, while the average is as low as 0.1 ha in the Southern Region (MoA 2005:2). There is a similar picture regional variation in poverty levels and poverty indicators, with higher levels of poverty and lower levels of literacy in the southern parts of the country than in the north.

With regard to average smallholding sizes the situation in the southern region of Malawi actually resembles the situation in the most densely populated regions of Africa, such as Rwanda, Burundi and parts of Ethiopia and Kenya. Malawian smallholders have on their part responded to the acute

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<sup>2</sup> Based on figures in Encyclopædia Britannica (2006)

problems of shortage of agricultural land through very intensive patterns of land use. While the smallholders seek to maintain the land under permanent cultivation, the level of fertilizer use is in relative terms very low. Current market price on chemical fertilizer means that large parts of the smallholders find they cannot afford to buy it. Instead, the “labour-intensive patterns of use on tiny landholding produce the situation ... of poorer families being forced to work as casual labourers, ending in a vicious cycle of low production, low income and low food supplies” (Peters 2006:336).

After independence in 1964, the development policy pursued by the Malawian Government was based on agriculture. This strategy to a great extent favoured the estate sector, and significant amounts of land were transferred from the smallholders to the estate sector. However, the Government's agricultural policies during the first decades of independence also appear to have provided a certain basic security to generally poor rural smallholders through subsidized inputs and standardised (but low) prices for smallholders' products (Harrigan 2003:13-15; Kaarhus & Nyirenda 2006).

The liberalisation of economic policies starting in the 1980s also opened up for trends of increasing economic differentiation within a generally poor rural population. The anthropologist Pauline Peters, who has carried out longitudinal studies in a set of villages in the Central Region, documents a change away from a situation of “relative lack of differentiation” in 1986 when the country was still governed by the one-party regime of Life President Kamuzu Banda. At that time the close control over the rural economy limited the opportunities of rural families, but also kept the consumers' price of maize generally low, and “though poverty resulted in chronic under-nutrition, it avoided the kind of famine seen in 2001-2002” (Peters 2006:326). The structural adjustment conditionalities and economic liberalisation included a licence for Malawian smallholder farmers to grow the profitable burley tobacco. This policy shift contributed to an increased differentiation among rural families in areas suited for tobacco production. Peter's findings indicate increasing economic differentiation through evidence showing that:

In 1986-87 the top income quartile of sample households ... had a total income three times that of the bottom quartile, whereas this difference increased to nine times in 1990-91 and to 11 times in 1997, suggesting a pattern of rapidly accelerating differentiation among rural families (Peters 2006:326).

This differentiation points to a potential development of classes among the rural population, where one category of rural smallholders end up as landless and destitute, while others are able to establish themselves as relatively better off. This development is being consolidated over time. One implication is that both research on land issues, land reform policies and programme interventions cannot continue to operate with “the rural poor” in Malawi as an undifferentiated category.

### **1.3. PRESENT POLICY CHALLENGES: AGRICULTURAL DEVELOPMENT, LAND AND FOOD SECURITY**

In the Malawian context it has been argued that one reason for the lack of success of past agricultural strategies is that they ignored the land question among smallholder farmers (Chirwa 2004). The current land policy reform process is an effort to deal with this question. To what extent it will succeed to address land-related challenges in a way that can meet poverty reduction objectives and economic growth demands, together with equity claims and human rights' principles, still remains to be seen. The land question in Malawi appears to involve real dilemmas, which we will discuss further, especially in chapters 3, 6 and 8 of this report.

It should, however, be recognised that within the arenas of international and national development policy making, as well as in current debates on land and poverty reduction, there are also views tending to shift the attention away from land tenure issues. The view that land reform does not necessarily translate into improved livelihoods for rural poor seems to gain a certain acceptance.. It is argued that even for people who have got their land rights formalised or have their land claims recognised through land reforms, lack of inputs to make the land productive is a factor that may seriously hamper the poverty-reduction effects of ‘secure’ land rights. Thus, if land policy reforms shall also contribute to food security, such reforms must be combined with policies to increase poor people’s purchasing power (cf.CISANET 2004; cf.Cromwell & Kyegombe 2005).

The view that land is not enough to solve the problems of poverty reduction has recently somewhat slowed down the momentum of the Malawian land policy reform process. In the Malawian context, both Government and influential international donors have as response to recurring food crises over the last years increasingly focussed on policies and interventions more directly addressing the problems of food security. Problem formulations generally highlight “the *low productivity and low profitability of smallholder agriculture*” (MoA 2005:2; italics in original). The basic assumption is that “economic growth, poverty alleviation and food security in Malawi will remain dependent on smallholder agricultural production” (Cromwell & Kyegombe 2005:27). An overall framework which actually combines *land tenure issues* with food security and general poverty reduction concerns still seems to be missing.

#### **1.4. PERSPECTIVES AND FOCUS OF THIS STUDY**

When addressing the issues of land policy reform and its implications, in Malawi we find that the highest pressure on land and potential land conflicts in the southern part of the country. We find that priority areas for land policy reform interventions, but also presumably the highest demand for land rentals are in the Southern and Central Regions. These factors in combination with the complex – and not always well understood – matrilineal systems of land tenure in South and Central Malawi together form a set of challenges that made the team focus specifically on these regions in our study.

The theoretical basis for the analysis of the role of land markets is within new development economics and draws heavily on the transaction cost school and the imperfect information school (Stiglitz 1986). We combine this with a rural natural resource base perspective realising that land is an immobile resource that is essential for agricultural production making such production spatially dispersed. This necessitates that all other factors of production have to be brought to the land, and output subsequently has to be transported to the point of consumption, imposing large transaction costs on such economies as constraints to the formation and functioning of markets. Seasonality and risk are additional factors that cause rural households to be only partially integrated into markets limiting the functioning of inter-temporal markets for consumption smoothing (Binswanger and Rosenzweig 1986). Asymmetries of information lead to problems with moral hazard and adverse selection, especially causing problems in establishing well functioning credit, insurance and labour markets. One consequence of this is that most rural households in poor rural economies have a subsistence-orientation. Behavioural and welfare analyses for such rural households therefore have to take into account that they are both producers and consumers and that their production and consumption decisions typically are non-separable (Singh et al. 1986, de Janvry et al. 1991).

With a focus on intra-household and inter-household distribution of rights within kinship groups and villages it is necessary to go beyond to unitary single decision-maker perspective of households,

making it more relevant to draw on cooperative (Manser and Brown 1980, McElroy and Horney 1981) and non-cooperative bargaining models (Lundberg and Pollack 1993). Beyond this we draw on the large and rapidly growing literature on land markets and land reforms which is an active area of research for many development economists. We refer to Chapter 5 for a more thorough presentation of this theoretical framework and its implications.

Integrating these perspectives with a focus on gender, women and their rights to land constitutes a field that opens for fruitful research collaboration between development economists and anthropologists.

As a tool towards a better understanding of rural families' and in particular rural women's situation with regard to land holdings in the so-called "matrilineal belt" of southern and central Malawi, the study will more specifically draw upon perspectives on kinship, descent and inheritance developed within social anthropology. Among the social science disciplines, social anthropology in particular has been concerned with kinship and descent as organising principles, and a substantial field of research was developed within kinship and community studies, focusing on Africa in particular. These perspectives will be briefly presented (in chapter 7) before they are critically employed (in chapter 8) to analyse some aspects of both rural realities and policy initiatives over time.

The report is basically structured into three parts. The first part consists of chapters 1 – 4, providing a background to the issues to be further discussed and analysed in chapters 5 – 6 and chapters 7 – 8. Chapter 5 provides some theoretical background for the analyses and discussion of land markets presented in chapter 6. While chapter 7 gives a more general introduction to some elements of kinship analysis, which is used in chapter 8 to analyse gender aspects of land rights in Malawi, with a particular focus on women's land rights in matrilineal groups.

## **1.5. OBJECTIVES OF THE STUDY**

The following objectives were formulated in the preparatory phase of the study:

- Relate Malawian land reform initiatives to a wider context of international trends and current debates
- Give a brief historical background for the current land reform process
- Assess assumptions vs. empirical evidence as a basis for the land reform
- Discuss the rationale and role of land markets in relation to the land reform
- Discuss assumptions and assess the role of land reform for economic development and poverty reduction in Malawi
- Discuss women's land rights in relation to the land reform process
- Identify knowledge requirements and research needs in relation to land reform in Malawi

These objectives are largely reflected in the organisation of chapters in the present report.

## **1.6. SOURCES OF INFORMATION AND OUTLINE OF THE STUDY**

The study presented here is in part based on a three-weeks visit to Malawi in March 2006 by the research team who are also the authors of this report. The stay in Malawi made it possible to make several field visits in rural areas, and carry out interviews (mainly group interviews) in villages that both formerly and currently were targeted for land policy reform programmes. The team very much appreciate that people in the villages were willing to share their time, knowledge and experiences

with us, thus providing an essential part of the empirical information we discuss in this report. Summary accounts of the village interviews are found in Annex II.

The visit to Malawi also provided the team with the possibility to meet, interview and discuss land reform issues with a number of Malawian and Malawi-based officials, researchers and academics, project staff, and agricultural extension staff. To all of them we are deeply grateful for the valuable information provided and their contributions to the team's own exploratory research process. The report is further based on desk studies of relevant literature, research reports, and policy documents. Some of these have been accessible through Norwegian library services, some are available on the internet, while some key sources of information could only be accessed in Malawi, and were either made available by Malawian officials or accessed at the Library of Bunda College.

*Chapter 2* of this report gives a brief historical background on land tenure and land policies in Malawi. *Chapter 3*, using the 2002 National Land Policy as its point of departure, gives an overview over important policy changes and policy challenges at present. *Chapter 4* briefly describes key elements in the Malawi Land Reform Programme – to be implemented in the period 2003-2007. *Chapter 5* gives an introduction to the analytic framework used by economists to analyse land policies and land markets. *Chapter 6* makes use of this framework in a thorough discussion of basic assumptions and available evidence concerning the role of land markets for economic development and poverty reduction in Malawi. *Chapter 7* introduces elements of anthropological kinship theory related to current perspectives on land and gender. In *Chapter 8* these perspectives are employed in a discussion of women's land rights in Southern and Central Malawi, pointing to current challenges related to land tenure changes and policy reform implementation. *Chapter 9* concludes by indicating key implications of the analyses presented in the report and points to some of the main challenges for land policy reform in Malawi today.

Randi Kaarhus is the main author of chapters 2, 7 and 8, while Stein Holden is the main author of chapters 3, 5 and 6. Rodney Lunduka has contributed to chapters 2, 4, 5, 6 and the village reports.

## **2. LAND POLICY IN MALAWI: A BRIEF HISTORICAL BACKGROUND**

Any analysis of land tenure and current land policy reform in Malawi should also include a historical perspective on current challenges. Such a perspective must at least go back to the 19<sup>th</sup> century.

### **2.1. LAND AND COLONISATION: THE NYASALAND COLONIAL REGIME**

Upon his expeditions in the region, primarily in the period 1859-63, David Livingstone described a previously peaceful and well-populated territory now haunted by the slave trade, but “ripe for ‘commercialisation and Christianity’...” (Peters 2002:162). This was a territory where the first Bantu-speaking group had settled between the 1<sup>st</sup> and the 4<sup>th</sup> century. A new wave of immigrants moved into the area between the 13<sup>th</sup> and the 15<sup>th</sup> century.<sup>3</sup> In 1480 they established the Maravi confederacy, encompassing most of present-day central and southern Malawi. But this confederacy collapsed after 1700 (Boeder 1984). At the beginning of the 19<sup>th</sup> century, the main groups of people in southern and central Malawi, organised primarily through matrilineal principles of descent, were the Mang'anja, Nyanja and Chewa.

Between 1790 and 1860 a surge of increasing slave trade affected the region, followed by colonisation efforts both from Portuguese East Africa and by the British. Two new groups of Bantu migrants, Ngoni and Yao, also moved into the region in this period. The Ngoni who settled in Malawi was one of the groups that spread north and east as a result of the conquest-based expansion of the Zulu empire in the south. Their expansion was promoted by a superior military organisation, supported by a political organisation based on patrilineal succession to office, and land and wealth acquired through conquest and raiding. The Yao are known to have migrated into the territory acting as middlemen in the trade in goods, guns, and slaves between the eastern coast and the interior. They were part of a commercial network with economic ties extending to Zanzibar, and had converted to Islam as a result of their close links with the Swahili coastal culture; thus, it may be said, “modernising” without abandoning either polygamous marriages, divorce, or matrilineal principles of descent and inheritance (Mitchell 1966).

From the early 1880s, a number of “European individuals, companies, missionaries, traders, hunters and planters acquired land from African chiefs” (Baker 1993:5). When the British in 1889 established a protectorate over the Shire Highlands (in the south of present-day Malawi) one motive was to keep the Portuguese back in this process of colonisation. The proclamation of the protectorate led, according to Baker, to an increased immigration of European settlers seeking to acquire land before more formalised arrangements for land claims were established (Baker 1993). However, a situation characterised by increasing internal conflict and the negative effects of the slave trade also provided some legitimation when the British declared full colonial authority over the whole of what was called Nyasaland (present-day Malawi), in a notification published in the London Gazette in May 1891 (Silungwe 2005:17). British interventions put an end to Yao business activities, linking slave-raiding and legitimate trade. Pax Britannica was thus enforced in the Protectorate (Eidhammer 2005; Mitchell 1966).

The European settlers had usually acquired their land through “agreements” with local chiefs. The legality of these agreements was later questioned. It was seen as contentious whether the land could be so alienated against existing rights of customary landholders (cf. Malawi 1999). It has also been questioned whether the local chiefs actually conceived of this granting of land as a permanent

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<sup>3</sup> Basic information taken from Encyclopædia Britannica (2006).

alienation of community land, since the very concept of land sales was not part of their cultural repertoire. These transactions have also been characterised as based on a mutual misunderstanding, “the Europeans thinking chiefs had absolute rights of land ownership, the chiefs thinking Europeans would act like Africans in their land dealings...” (Boeder 1984:19). The European misunderstanding has, however, survived up to the present. The question of ownership is still “misinterpreted by many writers who think that village headmen, chiefs, or tribes own the land ... [while they] are there to protect the customary land against outsiders, and this is what is often misinterpreted to mean that the land belongs to them” (Nothale 1986).

The British colonial Secretary of State in 1902 formalised the European settlers’ rights to the land acquired from the indigenous communities prior to 1894, through so-called *Certificates of Claim*. In practice this meant that the indigenous communities resident in the areas subject to the Certificates lost ownership and control of the land; though “that was not the understanding of chiefs when they granted concession in the first place” (PCILRP 1998:19). At the time of formalisation these Certificates of Claim covered a total area of 3.7 million acres<sup>4</sup> (Baker 1993).

In general, control over land and native labour were both dominant issues in colonial history of the Protectorate of Nyasaland (Peters 1997:193). Communities were incorporated into the colonial economy either as sources of tenant labour or seasonal wage labour, as food producers, or as sources of migrant labour to plantations and mines further south on the continent (Haraldsdottir 2002:24). In order to compel Africans – men in particular – to work on European estates, the Nyasaland administration in 1893 imposed a “hut tax” which had to be paid in cash or labour; the exploitative provision of labour being organised under the so-called *thangata* system. However, such measures were not unique to the British colonialists. In 1899 a new labour code was imposed in Portuguese East Africa (present-day Mozambique) requiring all able men between 14 and 60 years of age to work for wages, principally on plantations under semi-feudal conditions. The brutal enforcement of this rule resulted in large-scale migration, especially of people of the Lomwe ethno-linguistic group, into the southern parts of Nyasaland, to settle as workers on the newly established plantations (Boeder 1984).

Land disputes between the white settlers and the local people in the Protectorate began to intensify as more land was taken away from the locals. In 1915 native protest culminated in an (suppressed) uprising lead by John Chilembwe, attacking one of the European estates in the south of the country (Mbalanje 1986). The colonial administration of Nyasaland both in 1903 and in 1920 appointed Land Commissions to address legal aspects of the colonial regime’s land holding policies, and the resulting problems of landlessness among the native population. The 1920 Commission thus recommended “the provision of land reserves for indigenous communities as long as it did not lead to loss of labour by the British settler community” (Silungwe 2005:20).

In 1951 a Land Ordinance was passed to formalise the reality of land tenure regimes “created by treaty, convention, agreement or conquest”, defining land as either *public*, *private* or *customary* (PCILRP 1998:21). However, in the words of the Commission of Inquiry on Land Policy Reform appointed by the President of Malawi in 1996, what was called *customary land* was “in essence a mere species of ‘public land’ ... granted to the natives” (PCILRP op.cit.). Under British colonial law Africans had no formal title to land. The issue of concern under colonial law was how to regulate occupation and user rights among the native population.

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<sup>4</sup> 3.5 million acres is close to 1.5 million ha.

## 2.2. POST-COLONIAL LEGISLATION AND LAND DEVELOPMENT INITIATIVES

When Malawi gained independence from Britain in 1964, the country inherited “a rural settlement structure in which some of the most fertile and well-watered lands were reserved to white farmers” (PCILRP 1998:29). However, under the Nyasaland colonial regime land had not been expropriated and alienated to the extent encountered in countries such as Zimbabwe or the Republic of South Africa.

In post-colonial Malawi a new Land Act was approved already in 1965. The Act to some extent redefined the colonial legislation, but confirmed the establishment of three categories of land: *public land*, *private land* and *customary land*<sup>5</sup>. According to a Malawian professional in law Chikosa Silungwe, the 1965 *Land Act* did not, however, grant the people of Malawi enforceable land rights under the category of ‘customary land’. Under the 1965 Act, the “people of Malawi only have the right of use and occupancy over customary land” (Silungwe 2005:24). The category of ‘private land’, on the other hand, should according to this Act both include leased land and land held under the old Certificates of Claim.

In 1967, the Malawi Parliament approved three Acts constituting a legal framework for reforms in customary land. These were the *Customary Land (Development) Act*, the *Registered Land Act*, and the *Local Land Boards Act*. These land reform Acts were “drafted on the advice of Rowton Simpson, a former land tenure advisor to the Colonial Office ...” (Ng'ong'ola 1986:40). In this work Simpson used legal prototypes from countries with which he was already familiar, such as Kenya, Sudan, and Lagos in Nigeria. The Malawi Government did not, however, opt for a general reform of customary land, like in Kenya. The Customary Land Act (CLDA) in Part I makes clear that the Act should be applied to a particular area if the Minister responsible for land matters deems it expedient “for better agricultural development” (Ng'ong'ola 1986:40). This meant that the Act could be selectively applied to specific areas designated for agricultural development programmes.

The World Bank was willing to provide loans for such a land reform programme in the Lilongwe area, and starting in 1968 supported the *Lilongwe Land Development Programme* (LLDP) as part of a larger integrated rural development programme (the *Lilongwe Rural Development Programme*). The overall aim of the main programme was increased agricultural productivity. Customary land reform and development was a means to that end, aiming to “re-organize land tenure systems from usufruct to consolidated holdings under a registered deed of freehold title, thus making land preservation and improvement worthwhile to the individual” (Nothale 1986). The LLDP thus set up a land allocation unit to introduce this new system of individual ownership to land held under customary tenure in the Lilongwe area.

Clement Ng'ong'ola in his analysis of the 1967 Acts and their implementation through the LLDP in 1986 wrote that the new legislative framework shares its model prototypes:

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<sup>5</sup> *Public land* is in the 1965 Land Act defined as: “all land which is occupied, used or acquired by the Government and any other land, not being customary land or private land”. It includes: “(a) any land held by Government consequent upon a reversion thereof to the Government on the termination, surrender or falling-in of any freehold or leasehold estate therein pursuant to any covenant or by operation of law; (b) and notwithstanding the revocation of the existing Orders, any land which was, immediately before the coming into operation of the Act, public land within the meaning of the existing Orders”.

*Private land* is defined as: “All land which is owned, held or occupied under a freehold title, or a leasehold title, or a Certificate of claim or which is registered as private land under the Registered Land Act”.

*Customary land* is defined as: “all land held, occupied or used under customary law, but does not include any public land”. (Laws of Malawi, Section 2, Cap. 57:01).

... the spurious assumption that a direct correlation can be achieved between customary land rights and interests and the English property concepts described in a land reform legislation. This is not possible, and experience elsewhere has shown that registration officers may fail to recognise, record and protect some well-known customary land rights and interests which do not quite amount to the rights and interests described by the land reform legislation (Ng'ong'ola 1986:42).

Under the Registered Land Act, Section 24, the registration of an individual as a proprietor “confers on him the rights of ownership of that land as private land” (Mbalanje 1986). The Act did not become operational until 1972/73 when the first Land Registry was opened in Lilongwe, primarily to deal with land titles under the Lilongwe Land Development Programme.<sup>6</sup> The 1967 Acts made provisions for demarcating and registering “family land” rights as an exception to the general rule of allocation and formalisation land rights to individual proprietors. In practice “family land” titles became the rule under LLDP (Silungwe 2005:26). In the case of registering “family land”, however, the provision only opened up for one family representative to be registered as the “proprietor” (Ng'ong'ola 1986:42).<sup>7</sup>

Land development programmes aiming to formalise individual titles on customary land was not the only initiative taken by Kamuzu Banda's government to promote agricultural productivity in Malawi. The government also established settlement schemes on public, as well as on customary land. According to the 1965 Land Act, the Government could actually dispose of customary land and alienate such land without any compensation to the indigenous communities (Silungwe 2005:24). The objectives of the post-colonial government when establishing these settlement schemes included:

- enlarging the area under cultivation and reclaiming under-utilised land
- settling underemployed rural people
- promoting cash production for export
- providing settlement and employment opportunities and for members of Malawi Young Pioneers (Nothale 1986).

The above mentioned *Malawi Young Pioneers* were originally established as an organisation for mobilising the youth, especially school leavers, to promote (rural) development in Malawi. It was later organised as an “elite wing” of the League of Malawi Youth, a division of President Kamuzu Banda's *Malawi Congress Party*. The Young Pioneers have further been characterised as a “major instrument for the operationalisation of Dr Banda's one party state dictatorship” (Phiri 2000:3), and as the Presidents “most repressive instrument” (Phiri op.cit. p. 2). While their political role was that of seeing to that “Dr Banda ...was elevated way above any political opposition that might have existed, real or imaginary” (op.cit.) Over time their role was extended to include that of security and intelligence.

Training of Young Pioneers members would normally involve one year at a training base with a curriculum ranging from political education to farming and livestock keeping, to the use of small firearms. “Once trained, the Young Pioneers were deployed to different parts of the country ... to work on rural development schemes” (Phiri op.cit. p. 2). Foreign donor agencies funded the Government's settlement schemes, and also supported President Banda's approach through the Young Pioneers to employ youth in a rural context and “thereby stem their tendency to drift to urban areas where jobs for them did not exist” (Phiri 2000:2). In the period 1964-1976 a total of 32

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<sup>6</sup> Land Registries were later opened in Blantyre (in the South) and Mzuzu (in the North), dealing primarily with urban land titles.

<sup>7</sup> The LLDP and the gendered implications of this provision on formalisation are further discussed in chapter 7.3.

settlement schemes were established, with more than 8000 settlers. The largest number of (re)settled were located in the South of Malawi (Nothale 1986).

The role of the Young Pioneers under Kamuzu Banda's 30 years' in power, including their role in the settlement schemes, should be seen as part of the larger picture of national development policy in a one-party state – a development based on agriculture, with strict control and surveillance procedures, extending even to the domestic sphere. The party in power, the Malawi Congress Party (MCP), continuously disseminated messages to promote “unity, loyalty, obedience and discipline” as cornerstones of development (Butler 1976). In addition to the League of Youth, there was also the MCP-sponsored *League of Malawi Women*. It has been claimed that Malawian women through the political propaganda were “flattered and skilfully manipulated into seeing themselves as members of the President's *mbumba*<sup>8</sup>...” (Butler 1976:242). They were encouraged to show their support by “dancing, singing and presenting gifts in his [the President's] honor, encouraging their husbands to pay taxes promptly ... and reporting on anyone they observe who doesn't conform to MCP ideals” – including their husbands (Butler op.cit.).

Political control and surveillance was also extended to university education and social research, including restrictions on fieldwork in rural areas and a ban on higher-level training in a discipline such as social anthropology. One result is a lack of qualitative and fieldwork-based studies from rural areas, providing in-depth information on land rights, tenure changes and village livelihoods – until such studies were permitted from the second half of the 1980s.

### **2.3. LAND POLICY REFORM PROCESSES AFTER 1993**

Multi-party democracy was introduced in Malawi as a result of a political and economic process culminating in a national referendum in 1993. In the run up to the first multiparty elections in 1994, the land question was one of the central issues of political contention, which eventually gave Bakili Muluzi the power of the Presidency (Silungwe 2005:30). The administration of the newly elected president in 1995 established a new Policy Planning Unit in the Ministry of Land with the assistance of the World Bank. In 1996 a *Presidential Commission of Inquiry on Land Policy Reform* (PCILPR) was established. The terms of reference for the Commission, stated in the *Preliminary Report of the Presidential Commission*, was to undertake “a broad review of land problems throughout Malawi, and recommend the main principles of a new land policy which will foster a more economically efficient, environmentally sustainable and socially equitable land tenure system” (PCILPR 1998:4). To provide an empirical and analytical basis for this work, a number of studies of land utilisation and land tenure on customary, public and estate land were commissioned.

In its first *Preliminary Report*, the Commission presented a general perspective on land tenure in Malawi, and was particularly concerned with the category of customary land, and its relationship to private land. Customary land tenure was by the Commission defined as “a complex mixture of rules of conduct, leadership codes and management principles relating to access to and control of land in a given social context” (PCILPR 1998:33). This means that customary tenure rules will vary between communities, but usually they will include a rule that “every individual has, by virtue of membership in a given community, access to the land resources of that community in space and time” (PCILPR 1998:46). These access rights will be transmissible to designated heirs, according to either matrilineal or patrilineal rules of land inheritance. With increasing pressure on land under customary tenure, the Commission pointed to changes within the traditional lineage organisation of descent,

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<sup>8</sup> That is, the group of matrilineal relatives; see Chapter 8.1.

inheritance and succession, where potential heirs and users “most distant from core lineage members are increasingly becoming targets for eviction” (PCILPR 1998:33)

According to the Commission, the government had, based on the assumption that customary land was inherently insecure, quite early after independence decided “to pursue a policy that would privatise customary land ... as a means of promoting agricultural development” (PCILRP 1998:48). However, reviewing the Lilongwe Land Development Programme, the Commission found that even though “privatisation through tenure conversion has been carried out ... very little has changed (PCILPR 1998:48). And it further claimed that: “None of the benefits predicted by policy planners, such as greater ‘security’ of ownership, negotiability of title, and a robust land market, have materialised,” (op.cit.).<sup>9</sup> The Commission was also convinced that the form of privatisation of customary land carried out under the LLDP tended to “erode customary social values and institutions especially in matrilineal societies” (PCILPR 1998:50).<sup>10</sup>

Concerned with the large areas of land which over time had been converted from land controlled by local communities into ‘private’ or ‘public’ land, first under the Nyasaland Protectorate, but also after Malawian independence, the Commission observed that “most freehold land in rural and urban areas is still owned or controlled by non-indigenous Malawians” (PCILPR 1998:52). They pointed out that the rural freehold estates are primarily “concentrated in the tea growing areas of Mulanje and Thyolo which have some of the highest population densities in the country” (op.cit.). After extensive debate, the Commission stated that it was persuaded that “the acceptance of Certificates of Claim and the consequent legitimisation of title to land to which they relate, was a serious historical wrong to indigenous communities especially in the Southern Region of Malawi” (PCILPR 1998:53). The severe land pressure in the southern districts of Mulanje, Thyolo and Chiradzulu was thus, in part, seen as a result of this “historical wrong”, and the Commission stated that “it is not unreasonable that demands for some form of land readjustment are being asserted in those areas (op.cit.).

The final report of the Commission was submitted in 1999 (Malawi 1999). In 2000 a technical team organised by Professor Rexford Ahene from Lafayette College in the US was given the task to review the reports and synthesize the results, with the aim of developing a new comprehensive land policy. This work was accompanied by a consultative process of focus group discussions with various stakeholders. A draft policy was circulated and discussed with groups including traditional leaders and civil society representatives, as well as specialists in land tenure issues; followed by three regional consultative workshops. In 2001 a final national workshop on land policy was held in Lilongwe.<sup>11</sup> The Malawi National Land Policy (MLPPS 2002) was then approved by the Cabinet, and finally by Parliament in 2002.<sup>12</sup>

The Policy process was taken one step further when the Ministry of Lands the same year requested the Malawi Law Commission to undertake a review of existing land legislation. A Special Law Commission was empanelled in 2003 to review all land related laws. Prof. Stanley Khaila from Bunda College, University of Malawi, was elected chairman of this Commission. The work of the Commission was organised in 4 committees, looking into what would be the impact of the new Land Policy in the legislation concerning issues of: Land management and administration; Registration, titling and surveying; Land markets transactions; and Land planning and development. The Special

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<sup>9</sup> These issues will be further discussed in Chapter 6 of the present report.

<sup>10</sup> See Chapter 8.2 and 8.3 for a further discussion of empirical findings related to this claim.

<sup>11</sup> Prof. Rexford Ahene, personal communication.

<sup>12</sup> Main issues addressed in the National Land Policy are presented in Chapter 3.

Commission's work also included a series of consultative workshops at regional and national levels.<sup>13</sup>

Among Malawian civil society organisations, land had by 2002 become an issue which gave rise to the creation of a civil society task force, which in 2005 was formally organised as a civil society network called Land Net. During the work of the Special Commission, the civil society network both had a representative in the Commission, and was consulted during the process to present inputs based on the member organisations' priorities. This was, in a Malawian context, considered quite a novelty in a legislation process.

At the time of the visit by the research team presenting this report, in March 2006, the Malawian land policy reform process had reached a stage where a new draft Land Bill, based on the work of the Special Commission, was ready to be presented to Parliament. At the time, however, a number of traditional authorities were opposing the Bill even though they – or their representatives – had earlier commented on the report through the Special Commission's consultative process. Their resistance was, however, based on the conception that this Bill would eventually undermine their traditional and legitimate power over land at the local community level. Others asserted that without the support of the traditional authorities the Bill would not be passed in Parliament, and could not be implemented at the local level. A counter-argument in the on-going debate on the Land Bill was that, strictly speaking traditional authorities and chiefs did not own the land they claimed they would lose. The ownership they defend was in many ways a politically created fiction promoted by the Malawi government under Kamuzu Banda's regime. Where and when the process of land policy reform would move on from this fairly agitated public debate was not clear at the time the research team collected information for the current report.

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<sup>13</sup> Prof. Stanley Khaila, Bunda College, personal communication.

### **3. THE NEW LAND POLICY: IMPORTANT POLICY CHANGES**

In this chapter we summarize the main policy changes that have been proposed in the New Land Policy (MLPPS 2002) and the following draft report of the Special Law Commission (SPC 2006) that reviews the Land Act (Cap.57:01), the Registered Land Act (Cap. 58:01), the Deeds Registration Act (Cap. 58:02), the Conveyancing Act (Cap. 58:03), the Land Acquisition Act (Cap 58:04), the Adjudication of Titles Act (Cap. 58:05), and the Customary Land (Development) Act (Cap. 59:01) and proposes amendments to these.

#### **3.1. RECOMMENDING NEW RESTRICTIONS ON FREEHOLD TENURE**

The New Land Policy (MLPPS 2002) recommends that freehold tenure should be reserved for Malawians. Non-citizens of Malawi are recommended to obtain Malawian citizenship to retain their freehold rights to land. The Special Law Commission (2006) proposes an amendment of the 1965 Land Act stating that all freehold land acquired by non-citizens prior to the new amendment shall be converted to leasehold interest unless the persons currently in possession of such land have acquired Malawian citizenship in accordance with the Citizenship Malawi Act within a period of two years (Cap 15:01).

The Commission also considered the situation where freehold land titles are in the hands of a shareholding company. Such a company may sell its shares to foreigners at the stock exchange market resulting in making it a foreign company overnight. The Commission recommended that the law should require the Registrar of Companies to furnish the Minister of Lands with information regarding the status of shareholding in companies in Malawi. Furthermore, no land shall be assured to or for the benefit of, or acquired by or on behalf of any body corporate, unless such body corporate is authorized by a license issued by the President to hold land in Malawi

The Commission also suggested a Section 24D (Freehold land held by non-residents who are not citizens of Malawi) that “empowers the Minister to acquire private land under freehold title held by a non-citizen who is not ordinarily resident in Malawi for a continuous period of two years and who has not shown or effected his intention to develop the land, dispose of it or use or own the land jointly with a Malawian”. This is also intended to take care of some of the problem of underutilized freehold land in Malawi.

#### **3.2. CUSTOMARY LAND REFORM**

Section 5.3.2 of the New Land Policy (2002) highlights an important problem with the previous land law. It states “under section 25 of the Land Act, original title in customary land was removed from Chiefs and community owners and vested in the President in trust for all citizens of Malawi. The Act also gave the Minister responsible for lands the power to administer customary land and to grant leases not exceeding 99 years. The practice even resulted in converting some customary communal land to freehold without adequate consultation with the customary owners. However, because estates were generally allocated to non-lineage members, the process actually undermined tenure security and increased land pressure and conflict among customary landholders”.

The Presidential Commission (PCILPR 1998) recommended “abolishing the authority of the Minister to effect any transactions in respect of customary land”. The Special Law Commission in according with this recommended restricting the powers of the Minister to the disposal only of public land that is not customary land.

The New Land Policy (2002, ch.4.7.2) recognises the growing land pressure and evolution of customary land ownership towards stronger individualised rights. It states that the Government will affirm the growing assertion of exclusive land rights and the desire to develop customary land with secure tenure by families, corporations, organizations and individuals.

The Special Law Commission (2006) recommends that there should be only two categories of land, namely “**public land**” and “**private land**”. These two should be divided into classes. Thus public land is to constitute “Government land” and “unallocated customary land used for the benefit of the community as a whole”. Such unallocated customary land shall include *dambos*<sup>14</sup>, grazing areas and graveyards. Private land, on the other hand, shall include the classes of “leasehold land”, “freehold land” and “customary estate”.

### **3.2.1. Individualisation of customary land rights**

The New Land Policy recommends that customary landholdings shall be registered as **private customary estates** for entire communities, families or individuals. This is a response to growing land pressures and the evolution of customary land ownership towards stronger individualized rights. The idea is also to strengthen the tenure security of families, corporations, organizations and individuals on customary land where these property rights will be the **private usufruct rights in perpetuity**. Registered and titled land of this type should have full legal status and may be leased or used as security for a mortgage loan.

“Customary estate” land is defined as “any customary land which is owned, held or occupied as private land within a Traditional Land Management Area under a freehold title and which is registered as such under Registered Land Act” while “customary land” is defined as “all land that falls within the jurisdiction of a Traditional Authority and is held, occupied or used under the customary law of the area”.

Customary land includes the following categories; customary estate; village residential land; unallocated garden land; public land; or land used for any special purpose of the community. This implies that customary land includes both private and public land.

The Special Law Commission (2006) proposes to introduce a new law to facilitate the conversion of customary land into registered land by blending the Adjudication of Titles Act and the Customary Land (Development) Act (both of 1967) in a new Bill entitled “Customary Land Management”. The proposed Customary Land Management Act states the following about registration of customary land: “*Customary land which is allocated to individuals or families shall be registered*”... “*as private land and shall be owned as customary estates*”.

This facilitates legal conversion of customary land to registered land under the Registered Land Act as private land. The plan is to implement this by establishing local land administrations at District, TA and Group Village levels. We return to this below.

### **3.2.2. Land acquisition and conditions for compensation**

The New Land Policy (2002) addressed the problem of the past where customary land was expropriated from communities without compensation. This was addressed by making a distinction between ‘Government land’ and ‘Public land’. To make the Government’s acquisition plans more transparent, land acquisition for national development purposes should be Government land and Private land acquired for the benefit of the general public or for national development purposes.

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<sup>14</sup> *Dambos* are wetlands typically found near lakes and rivers.

Such land should be compensated based on the open market value and paid to the owner both for the land and improvements.

The Special Law Commission (2006) recommends to establish a new Act to be titled “**Land Acquisition and Compensation Act**” to reflect that any acquisition under the Act shall be accompanied by appropriate compensation. The Commission also recommends that for consistency and uniformity with the Constitution, the words “fair compensation” be deleted and substituted with the words “**appropriate compensation**”. In the proposed new Land Acquisition and Compensation Act it is also stated that “A Chief may acquire land situated within the area of his jurisdiction for public purposes and the person so deprived shall be entitled to an alternative allocation of a customary estate”.

The Commission also recommends that an independent evaluator appointed by the Minister or local government authority shall be used to determine what is appropriate compensation. The compensation should be calculated based on losses of occupational rights, loss of land, loss of structure (investments), loss of business, relocation costs, loss of goodwill, costs of professional advice, injurious affection, nuisance or loss or reduction of tenure as long as they are not too remote and are a natural and reasonable consequence of the disposition of the land.

### **3.3. DECENTRALISATION AND BUILDING-UP LOCAL LAND ADMINISTRATIONS**

The New Land Policy aims to promote decentralised and transparent land administration. As a follow-up the Special Law Commission (2006) has proposed a new Customary Land Management Act “to provide for the adjudication of rights and interests in customary land to promote a more democratic, transparent and accountable management customary land; for the establishment of Customary Land Committees; for the establishment of Customary Land Tribunals to handle customary land disputes and for matters connected therewith and incidental thereto”.

The planned land reform implies a closer integration of the traditional system and government system. One of the issues was the role of the chiefs and Traditional Authority in the new decentralized land administration system. Section 5 of the New Land Policy (2002) includes recommendations for making the responsibilities of traditional leaders more transparent and democratic.

The Commission proposes that customary land shall be entrusted to Traditional Authorities and that the customary land should vest in the Republic to conform to the Constitution. The power of the Chiefs is therefore reduced to authorisation of use and occupation of customary land within their areas in accordance with customary law. On the other hand the commission advocates a central role of the Chiefs to place “administrative integrity of customary land on a transparent and equitable foundation”. This implies that the Chiefs get central positions in the new local land administrations and the local land tribunals as leaders of the democratically elected committees. The Chiefs are therefore given an important role in the local government administration in relation to land administration.

#### **3.3.1. Local land administration**

The proposal is at present to make the Chiefs chairpersons of the local Customary Land Committees at TA level. Such committees will also be established at Group Village level. The Committee shall consist of the Village Headperson or Chief, who shall be the Chairperson, and six other persons

recognized and respected by the community, at least three of which shall be women, who shall be elected in accordance with the tradition of the area.

To strengthen the local land administration there shall be appointed a Land Clerk for each Traditional Land Management Area to serve as the secretary to the Committee appointed for that area. The Land Clerk shall be employed by a local government authority having jurisdiction in that area and shall be trained in land tenure issues and be competent in basic map preparation.

A Land Clerk shall have the duty to; a) carry out such survey work as may be required in the execution of the allocation process; b) organize to prepare a basic map for each Traditional Land Management Area; c) maintain a record of land transactions occurring within a Traditional Land Management Area; d) provide technical advice on land matters to members of a Customary Land Committee; e) monitor compliance with the Customary Land Management Act, the Registered Land Act and the Land Policy.

### **3.3.2. Land registration**

The Customary Land Committee will be responsible for recording individual person's customary rights to a piece of land as proprietor of that land under the Registered Land Act, by recording such a person as owner of that piece of land. It may also register persons as joint owners or as owners in common. The "head" of a family may be registered as the proprietor of family land. The Committee shall also record partitions of customary estate lands and changes in family heads.

The Allocation Record shall consist of a form for each piece of land which shall show the number and approximate area of the piece of land as shown on the Demarcation Map; the owner of the piece, or that the piece is recorded as a customary estate or unallocated customary land; and the date on which the form is completed.

Public notice should be given for new allocation records and 60 days allowed for filing of complaints. After the expiration of sixty days the Land Clerk shall sign a certificate to that effect and shall deliver the Allocation Record and the Demarcation Map to the Registrar of the registration district in which the Traditional Management Area is situated.

Another issue is the minimum holding of customary land that should attract registration. The Commission agreed that there is need to empower the Minister to make rules to regulate minimum holdings of all types of land that should be registrable. In the case of customary estates, the minimum holding is set at 0.5 hectares to prevent fragmentation of agricultural land. Exceptions should be made for already existing rights in customary lands that are less than this and for units that are proven to be economically viable for holdings less than the minimum, such as poultry farming.

### **3.3.3. Land demarcation**

According to the New Land Policy (2002) the Government will undertake Traditional Authority boundary demarcation "in order to protect the villagers' land rights and promote better and sustainable use of the natural resources within villages"(ch.7.6.1). The TA land management area should be registered by the Commissioner of Lands and be used to verify the legitimacy of all land transactions on TA land. The Customary Land Administration will become responsible for enforcing the legal and administrative rights of customary estate holders.

### **3.3.4. Restrictions on customary land sales**

The Special Law Commission proposes to introduce the following restrictions on customary land transactions; a) No disposition of customary land within a Traditional Land Management Area shall

be allowed except with the consent of the Customary Land Committee; b) All dispositions of customary land shall require approval and signature by the relevant head of the land owning group, the Chief and an independent member of the Committee; c) No sale of a customary estate to persons outside the immediate family shall be permitted during the first five years of titling such customary estate.

### **3.3.5. Conflict resolution mechanisms**

Another important part of the new land policy is the establishment of a more democratic and transparent land conflict resolution system in the form of District level and Traditional Authority level Land Tribunals (MLPPS 2002). The lowest level of this system is the Village Land Tribunal (VLT) that is to be headed by the village headperson and in addition has at least four elected members from the village including women. Appeals from the VLT will go to the Group Village Tribunal (GVT) that consists of the Group Village Head assisted by four Village Headpersons. This is also the appropriate place for land disputes that go across the borders of the villages in the group. The TA Land Tribunal (TALT) will deal with disputes related to customary land within the TAs and appeals from GVTs. The Chief will chair the TA Land Tribunal and the Tribunal will consist of minimum four members from the community including women. The Special Law Commission (SPC 2006) provides more detailed guidelines for the Central, District and TA Land Tribunals (Customary Land Bill, Part 5). Among others it specifies that the TALT shall consist of six members of the community appointed by an Area Development Committee, two of which shall be women. At least one of the members should have legal or administrative experience. The other three shall be appointed on the basis of their knowledge of the area, including boundaries and people settlement, their experience in handling social issues, and their good standing in the Community. A further requirement is that a member of a Customary Land Committee shall not be eligible to be appointed to the Tribunal. Decisions by the TA Land Tribunal will be with simple majority voting.

Guiding principles for the land tribunals are also provided. These principles include objectivity, fairness and justice and consider; “the rights and obligations of the parties; the customary and statutory laws and traditional practices, with due regard to constitutional provisions; and the circumstances surrounding the matter including any previous dealings or disputes between the parties” (SPC 2006).

The District Tribunal shall consist of all resident Traditional Authorities, the District Land Registrar, three independent members of the District (appointed by a local government authority in charge of the district), one of whom should have legal experience. The District Tribunal shall hear and determine appeals against decisions of any Traditional Authority Land Tribunal.

Finally, there will be established a Central Land Dispute Settlement Tribunal as an appellate tribunal above the District Land Tribunals. Where a party is dissatisfied with the decision in the Central Land Dispute Settlement Tribunal, he or she may appeal to the High Court within thirty days of such decision.

The Central Land Settlement Tribunal shall consist of a chairperson who shall be a Resident Magistrate, at least three Chiefs, one from each Region of Malawi; and two other members with good standing in society. These members are to be appointed by the Chief Justice with approval of the Judicial Service Commission.

### **3.4. CHANGE IN INHERITANCE LAWS**

There are special challenges when it comes to developing inheritance laws that are compatible with the different cultural norms and practices in different parts of Malawi. The rights of children upon death of their parents, the rights of spouses upon the death of their husbands or wives, and the division of rights in the cases of divorce are issues of special concern.

The New Land Policy (2002, Summary and Main Policy Recommendations, Ch. E.2) states that “the Government strongly supports gender sensitive access to land and calls for changes in inheritance laws to allow the remaining spouse, children and especially orphans to inherit the property of their parents even when the deceased parent or parents die without a will”.

Furthermore, it states “the Government shall install special protection of land rights of minors and create a legal duty on Chiefs, Headpersons and adult members of a family to protect land rights of a surviving spouse and children in both matrilineal and patrilineal inheritance areas throughout Malawi” (Ch. E.4).

The policy also dictates that all children inherit land and real property belonging to parents equally.

The Special Law Commission (2006) recommends that on remarriage the surviving spouse should relinquish his/her share to the children. Where the deceased left no spouse, the property shall be transferred to the heirs in accordance with customary law prevailing in that area. The Commission also states that in the case of divorce, customary law should determine who should be left with the land. This implies that under the matrilineal system, the wife should remain the owner of the land, while under the patrilineal system the man should remain the owner. Where the marriage was arranged under *chitengwa* the man should remain the owner of the land after divorce.

### **3.5. REVISION OF LAND TAX/GROUND RENT**

The New Land Policy states among others; “An appropriate schedule of Vacant and Under Utilized Land Taxes shall be developed and enforced by the Government to discourage speculative holding of urban land” (Cap. 4.20.3.d).

The Special Law Commission considered the ground rent for agricultural estates to be a policy issue that should be determined at national level rather than being determined by the Minister. However, it also recommended that the formula for revision of rent should be captured in the schedule for easy review on the part of the Minister. The Commission thus recommended that for agricultural leases, the formula for the rent should be an equivalent of an official market price of one bag of maize per hectare at the prevailing market price. For other leases, the Commission recommended that the formula for the rent should be seven and half percent of the open market value of the unimproved site.

The Land Act opens for a penalty if ground rent remains unpaid at the end of ninety days after it became due and payable, the penalty should be equal to one tenth of the sum due.

The Commission has proposed that customary estates should not be rateable. It was recognized that a rate is a local tax that is normally associated with the provision of services such as roads, schools, health services. The Commission was aware that such services are not normally available in areas where customary estates are envisaged to be located. It was further realized that imposing a tax on the category of people that are anticipated to own customary estates would be unfair and prohibit

access to land for the rural masses that are supposed to benefit from security of tenure of customary land for their livelihood.

The New Land Policy (2002) indicates that the local land administration may be involved in collection and disbursement of ground rent and in determining whether to create, terminate or renew leases. Termination may imply redistribution to customary owners.

### **3.6. FACILITATION AND REGULATION OF LAND MARKETS**

The National Land Policy (2002) aims to protect against the potential loss of customary land by smallholders and other vulnerable groups and to control speculation in customary land in rural areas and to safeguard against unintended landlessness.

The Commission recommends restriction of customary land transfers. Such transfers should not be allowed within a Traditional Land Management Area without the consent of the local land administration committee. All dispositions of customary land shall require approval and signature by the head of the land owning group, the Chief and an independent member of the committee. Prohibition of any sales to persons outside the immediate family is recommended the first five years after titling of customary estate.

Section 35 of the 1965 Land Act indicates that short tenancies are free as it states that “the disposal of land by way of a short tenancy or a consideration not less than the market value will not require consent of the Minister responsible for land matters. In all other transactions the consent of the Minister responsible for land matters is required”.

The Special Law Commission (SPC 2006) had in its terms of reference to develop new legislation for the effective administration of land, such as, legislation regulating the relationship of landlords and tenants. The Commission considered that there is a need to develop a separate law in this area and concluded that such an exercise cannot be the subject of the present reforms due to the extensive nature of the subject area.

The New Land Policy (2002) suggests that the Chiefs may serve as notaries, adjudication officers to land transactions and land transfers. Registration of all land transactions will be required by the TA by appointing local land administrations to be responsible for a Traditional Land Records Storage and Management system to ensure more transparency in relation to such transactions. Chiefs and headpersons should monitor and grant consent to transfer in relation to land transfers.

The New Land Policy (2002, cap. 5.15) acknowledges that that the land policy that allowed rapid conversion of customary land to agricultural leases for tobacco production, which took place in the 1970s and 1980s, is the main cause of tenure insecurity, displacement of people, and shortage of land for farming, especially in some districts like Mchinji and Kasungu. The conversions did not lead to efficient and sustainable commercial land utilisation, partly because of declines in international tobacco prices and failure of estate owners to establish profitable commercial farms, causing debt problems and closedown of production while others never managed to start production. It is acknowledged that these policy failures caused social and economic discontent.

The state-regulated market for land leases is therefore considered a failure, and the New Land Policy advocates to redistribute idle estate land to smallholders by giving each household 2 ha land.

### **3.7. LAND REDISTRIBUTION AND RESETTLEMENT**

The Estate Land Utilization Study - ELUS (Cromwell & Kyegombe 2005) found that as much as 29 % of leasehold estates were underutilized and it was particularly the tobacco estates that were in a poor condition. Contracts were not enforced and were frequently violated.

The National Land Policy recognized that the inheritance system, on the one hand, leads to fragmentation of family holdings and land renting as a response to fragmented holdings. On the other hand it helps to ensure an equitable land distribution and prevents a rapid growth of landless households. The Customary Land Utilization Study - CLUS (Cromwell & Kyegombe 2005) identified only 3% landless rural households. A limitation of the inheritance system is that it does not encourage internal migration to even out land pressure. If a minimum farm size had been implemented limiting the possibility of all children to inherit small plots, this could encourage migration to look for better opportunities by those that did not inherit land.

Based on the perceived urgency of the problems, especially in the southern parts of the country, and in order to provide a long-term solution for prevention of a land crisis, the New Land Policy (2002) advocated a targeted land transfer and voluntary resettlement scheme, as well a social development fund to facilitate resettlement. This was based on the recognition that current land holdings of less than 0.5 ha per household are inadequate. The strategy was therefore to resettle landless and land poor households on estate land where estate holders had defaulted. The government had identified 14,000 ha of land to immediately resettle 3,500 farm households (15-20,000 people) and indicated a need of US\$ 25 million to do this.

The need for technical assistance and a pilot project to refinance resettlement procedures was recognized. We come back to the implementation of this pilot project in Chapter 4.2.

## 4. THE LAND REFORM PROGRAMME: POLICY IMPLEMENTATION INITIATIVES

When the Malawian Government had adopted the new National Land Policy in 2002, the next step was the planning of an implementation strategy. It was recognised by the Government that “focused action needed further momentum, in moving towards realising the four pillars around which the Malawi Poverty Reduction Strategy (MPRS) was built ...[which are] sustainable pro-poor growth and structural transformation; human capital development; improving the quality of life of the most vulnerable groups; and promoting good governance” (Ministry of Lands 2004:v). A task force was established comprising representatives from the Ministry of Land, Physical Planning and Surveys and from the Decentralisation Secretariat, and representatives of external donors such as DFID and the European Union. Its task was to come up with an implementation strategy to provide an “institutional, financial and operational framework for implementing the recommendations of the Malawi National Land Policy” (op.cit. p. 1). The strategy was finalised in 2004.

With regard to the *institutional framework*, the strategy says that the Government will use the existing government structures at District, sub-district and local levels, consisting of village, area and district development committees. Land committees and land tribunals should be established as sub-committees of these already existing development committees (Ministry of Lands 2004:10; cf. Kaarhus & Nyirenda 2006:8-12). In the land administration system, the Implementation Strategy points out that it is also necessary to clarify the roles of traditional authorities in relation to land issues: “Chiefs will have their roles spelt out clearly according to decentralisation policies and laws. This will avoid conflict of interest by the Chiefs, and it is necessary that the functions be separated” (Ministry of Lands 2004:10).

With regard to the *financial framework*, the strategy recommends that all activities and projects designed should be funded and coordinated under “one common sector wide approach” (Mi :32). The strategy document also expresses the hope that development partners would fund the implementation strategy in its entirety (op.cit.). At present there are three major development partners involved as donors to fund the land policy reform implementation: the European Union, the World Bank, and the African Development Bank. However, each of these only funds selected elements of the overall Implementation Strategy.

### 4.1. CAPACITY BUILDING

The *Malawi Land Reform Implementation Strategy* of 2004 points out capacity problems in the land sector, and states that the lack of land administration and management staff can seriously inhibit the implementation of the Land Policy. The problem is described as a shortage of professional staff at all levels. At Central Government and District levels the shortage includes “Planners, Surveyors, Architects and Valuation Officers” (Ministry of Lands 2004:11). At lower levels “there is inadequate supply of staff such as Land Clerks and Lands Officers” (op.cit.). Capacity building is thus singled out as a priority area of policy implementation.

Among the donors, it is primarily the European Union that has been involved in the area of capacity building. The EU is also funding a start-up project to establish an institutional framework for implementation of the Land Reform Programme. Since land is not a single-sector issue, the location of a central Secretariat for technical land services within the Ministry of Lands was not accepted by other sector interests in the first place. Thus the capacity building process was delayed at the central level.

However, the training of staff to fill the positions at sub-district levels is already on-going. The Natural Resources College (NRC), which is located just outside Lilongwe, at present runs a training programme to educate Land Clerks for the local Land Committees. At present they have training capacity for 55 students at a time, and the students after one year will receive a Certificate in Land Administration. Their curriculum includes basic land administration, land laws, community work, data collection, land surveying, geographic information systems (GIS) and land use planning.

The Polytechnic in Blantyre is also involved in capacity building through the training of surveyors. At present they only have capacity for 13 students.

## **4.2. RECENT RESETTLEMENT SCHEMES**

We see from chapters two and three that the presence of poorly utilized land in estates in combination with the mounting land scarcity with limited off-farm opportunities for near landless people, has resulted in the policy objective to redistribute idle and underutilized estate land to near landless poor households. Pilot attempts have already materialised to try to do this. Resettlement of people has never been an easy undertaking and requires substantial knowledge, skills and capacity to be undertaken in a peaceful and cost-effective way. Mistakes in implementation can easily result in land disputes and failure to meet the objectives of reducing poverty and enhancing efficiency of land use.

### **4.2.1. Thyolo resettlement schemes**

Thyolo is one of the most densely populated districts in Malawi with a population density of 267 persons/km<sup>2</sup>. The large tea estates in the district also contribute to the severe shortage of land. Earlier resettlement cases in Malawi include Mr. Ramos' estate in Thyolo in 1973. The GOM bought the land but the power to redistribute the land was given to the Traditional Authority and party functionaries. It has been reported that the party leaders interfered in the redistribution and obtained more land than the local villagers. The redistribution took place in a peaceful manner (IIRD 2005). GOM bought another estate owned by Mr. Sharpe in 1979. The traditional leaders were given the responsibility to redistribute land also in this case and also this redistribution was organised in a peaceful way. A third example, Chimwenya estate was redistributed in 2000. It was located in TA Bvumbwe and consisted of 175 ha and was redistributed by the TA Bvumbwe to eligible people within the TA in pieces of one acre to each. This also took place in a peaceful manner.

Lohnro donated 250 ha of land to Thyolo District Assembly in 2000 for redistribution to landless people in the district. The land, called Makande 1, was redistributed to 316 beneficiaries, each receiving 0.8 ha. Village sub-committees were used to distribute the land to land-poor and landless households after it had been demarcated. Also this redistribution was peaceful.

The Makande estate was originally established in the 1920s and expanded gradually with a major expansion in 1956 when two villages, Mwitere and Savala, were displaced without compensation. The villagers were allowed to resettle around the estate so that they could provide labour. Tobacco was the main crop on the estate.

In 2001 the GoM Ministry of Lands purchased Makande Estate after negotiations with Lohnro Agribusiness Limited. It was sold for 20 million MK. After that the estate was sub-leased to ADMARC for production of tobacco and maize. In 2002 the Government decided it wanted to redistribute the land and donated it to Thyolo District Assembly for distribution to the people in the district. After some negotiations 1,400 ha of land was distributed to 6 TAs with a total of 498

beneficiaries. The beneficiaries were supposed to be land-poor and landless households with property value of less than 20,000 MK. Later it turned out that many richer persons acquired land on the estates. It also turned out that many beneficiaries had sold their land. Furthermore, land demarcation was not well carried out and the demarcation was further complicated by removal of beacons by neighbouring villagers. The neighbouring villages were not satisfied with the resettlement plan and started encroaching into the area. This led to the involvement of police, several violent clashes and two persons killed. Settlers' houses were demolished, crops destroyed and women harassed. The settlers also did not have access to unsafe drinking water and there were outbreaks of cholera and diarrhoea. The neighbouring villages attempted to contaminate the water sources of the settlers. Theft of building materials etc. was another problem.

Why did it go so bad? IIRD (2005) found several explanations. First, politicians, including the president, had already in 1999 created false expectations by promising to purchase and redistribute the land in the estate to the neighbouring villages. Since this was their ancestral land that they had lost without compensation they should get it back. When they later discovered that land was distributed to other villages and without them being consulted that created anger. Second, when the settlers were given bigger pieces of land than the neighbouring villagers had, this contributed to justification of the encroachment. Third, there was the perception that there were many rich civil servants, politicians and business people that had obtained land through corruption. Fourth, the surrounding villagers depended on the estate for employment before it was sold. Up to 90% of the surrounding households had benefitted from such employment. Close to 50% of them were net buyers of food and they depended on off-farm income to buy food. The redistribution of the estate to settlers from the outside made the situation more difficult.

#### **4.2.2. The Community-Based Rural Land Development Project (CBRLDP)**

This is a pilot project administered by the Ministry of Lands and funded by the World Bank. The objectives of the project are to contribute to poverty reduction by reallocating land from under-utilised estates to land-poor and landless rural households that would like to establish themselves as farmers. More specifically, it aims to improve land delivery systems of accessing, titling and registration, provide security of tenure, increase agricultural productivity, and increase incomes. The project builds on identified rural development problems in Malawi where severe land scarcity and inequitable land distribution has developed in some areas because large customary land areas have been transferred to freehold and leasehold estates. With the history of many less successful land reform programs with violent outcomes in many other countries, this is an attempt to achieve peaceful land redistribution from the land-rich to the land-poor.

The project is in line with the New Land Policy in that it will contribute to more equitable and secure land distribution. The project uses the principle of "willing seller" and "willing buyer". We may also say that the Makande Estate was following this principle but it was the government that was the buyer in the case of Makande. In the CBRLDP settlers are involved at a earlier stage. Interested households organise themselves in groups of 20-35 households that can assess alternative estates with which they can negotiate buying of land. Each household has a grant of US\$ 1,050 that is used for the purchase of land and initial investment and running costs in the new settlement area. They can use up to 30% of this amount for the purchase of the land. The less they use on the purchase, the more they have left for investments etc in the new location. Five percent is used for resettlement allowance (transport and food), while at least 65% should go for farm development.

Four target districts have been identified for the project. These are Thyolo, Mulanje, Machinga and Mangochi. The first two are characterised by very high population densities and the latter two have idle land where people could be resettled. The target is to reallocate 15,000 households within a

period of five years. The project has received a grant of US\$27 million (2.7 billion MK) from the World Bank through the International Development Association (IDA) to support the pilot project. The total budget for the project is US\$29.8 million and the GOM provides the balance.

The project has four components; land acquisition and farm development; district land administration; capacity building; and project management, monitoring and evaluation (GOM 2005). The expected outcomes of the project are; secure community land assets; ownership of land parcels by individuals and households; increased sustainability of infrastructures; empowerment of the communities; improved food security; poverty reduction; and improved access to social amenities. The project is designed to follow the Community-Driven Development (CDD) approach that implies empowering communities, empowering local governments, improving accountability and building capacity. The project will therefore support the new land reform initiative by building land administrative capacity at the district level. It also supports build-up of land policy analysis and monitoring capacity at the national level.

Some of the design principles of the project are to:

- a) Redistribute only land that has not been encroached obtained from willing sellers, land administered by the Government already, or privately donated land.
- b) Exclude fragile and land with land use restrictions
- c) Beneficiaries will be self-selected and form groups on voluntary basis
- d) Eligibility criteria for beneficiaries are that they are land poor, destitute orphans and other marginalised groups
- e) Project resources for on-farm development is transferred directly to the beneficiaries
- f) Land provided to each beneficiary should be sufficient for subsistence and economic viability
- g) Beneficiaries will decide the property regime under which they will hold the land (leasehold, freehold or customary estate) after adequate orientation
- h) Lessons learned from the pilot districts will inform the design and scope for scaling up the operation.

An implementation manual has been developed to guide the project (GOM 2005). Partly it has been developed based on experiences with the Makande Estate resettlement scheme. The model builds on the new planned local land administration structure (see also Chapter 3). The local land administration should strengthen the local capacity to administer land issues (registration, mapping, provision of titles) and provide tenure security and stimulate development. A detailed organisational structure for project management and for integration into the national and district level administrations is developed. We will not go into all the details here but refer to the Project Implementation Manual (GOM 2005).

#### **4.2.3. Status of the CBRLDP in March 2006**

Only four groups consisting of 136 households had been resettled by April 2006. They moved to the resettlement areas in November 2005. Another 18-20 groups were at the time preparing to move before the next rainy season. We were informed about the status of the project by staff in Ministry of Lands, Housing and Surveys, the World Bank, an independent consultant who had just carried out a survey of the sending and resettlement areas, and we visited two of the resettlement sites and had focus group discussions/group interviews with one group of men and one group of women in each of the locations.

There have been several problems experienced with these first groups. First, they were moved very late, after they had planted crops in their home areas and after the rains had started in the new settlement areas. This implied that there were too many things to do at arrival, building of temporary

houses, demarcation of fields and land preparation for planting. This resulted in late planting resulting in poor yields. Second, access to basic social amenities like water, schools, health services and basic necessities was very poor and this became critical for the health and survival of the beneficiaries. Especially for one group lack of water was highly critical. We heard that there had been an outbreak of cholera in this group. It appears that the implementation manual has not given sufficient attention to how and when such basic services have to be in place. The Malawi Social Action Fund (MASAF) is supposed to provide these services but the implementation manual indicates that an application to them should be made after or upon arrival of beneficiaries. This is too late as it takes time to respond to such applications and establish the services. Also the beneficiary groups that came from another district faced more problems with being integrated with the neighbouring villages. There seems to be an element of envy or jealousy that potentially may make integration more difficult. This problem may be smaller if neighbouring villages also get a share of the land in case they otherwise become relatively much more land-poor than the settlers.

It is obvious that it takes time for both central and district administrations to develop the competence to organise these projects well. It was therefore wise to start with few groups and only expand gradually as confidence has increased and solutions are found to the problems experienced. There are very many things that can go wrong in these types of resettlement projects and the costs of resettlement are quite high. In order to solve some of the problems with basic infrastructure and social amenities these should probably be addressed before the beneficiaries are resettled or they could first be employed in relation to such investments, e.g. through food-for-work or fertiliser-for-work arrangements. If such amenities and employment also benefit the surrounding communities they are likely to be more positive and welcome the projects.

In the District of Machinga we visited two of the recently resettled beneficiary groups. We had two focus groups in each of the resettlements, one with men and one with women. This is a brief record of the feedback from them. More detailed information may be found in the Annexes to this report.

**Thyolo group.** They were 36 households out of which 10 have withdrawn and gone back to TA Bvumbwe in Thyolo. They had negotiated the price from 36,000 MK/2 ha to 33,000 MK/2 ha. Where they came from they had less than 0.2 ha each, 0.1 ha on average. Most of them had rented in land in addition, usually 0.1-0.2 ha, and had to pay 1,250-5,000 MK/ha per year in rent. The four largest problems they faced in the new settlement were; lack of water; long distance to hospital (25 km); market is far (25 km); and school is far (9 km). They had been informed in advance that these things had been taken care of. They have experienced problems with the neighbouring villages as people come in and cut trees on their land. They also did food-for-work but never received the food payment. The neighbouring villages kept the food payment. The same happened with food aid where their names had been included by the neighbouring villages in order to obtain more food aid, but they never got their share of this food. When they complained to the chief, he did not do anything. They have now complained to the District Commissioner but not to the TA. He has never visited them so they do not feel they know him. They have also not yet demarcated the land or received their certificates. They still feel tenure insecure and they told us that this was a main reason why the 10 households had left.

**Mijale group.** This group consists of 35 households. Most of them came from a neighbouring village where they were landless and made a living as sharecroppers or land-poor with 0.1-0.2 ha of land. The sharecroppers had rented 0.2-0.6 ha. Some also come from more distant villages within the district. They had received 2 ha of land each as beneficiaries of the resettlement program. They had not received land certificates yet but felt tenure secure due to the involvement of the TA, DC and the World Bank. Still, they demanded land certificates to ensure tenure security for their children. The

men were eager to get the certificates in their names as some of them felt tenure insecure with their background from a matrilineal and matrilocal tradition. They expressed a willingness to pay (WTP) for certificates in the range of 50 – 500 MK. They had paid a price of 14,000 MK/2 ha farm. None of them had returned to their earlier homes. When asked at what price they would be willing to sell their new farms they stated that they would not even be willing to sell at 1 million MK. Still they were facing some of the similar problems as in the other settlement group in terms of limited water access (use a river), long distance to hospital, school and market. They hope to get access to credit and become able to produce and sell more cash crops.

Other effects of the resettlement that we did not have the chance to investigate were the effects in the areas they moved from. Reduced land pressure should be expected but the effect will be small unless a considerable number of people leave a locality.

#### **4.3. THE PLANNED CUSTOMARY LAND REFORM AND SUSTAINABLE RURAL LIVELIHOODS PROJECT**

The Customary Land Reform and Sustainable Rural Livelihoods project will, according to plans, be funded by ADB. The project's main thrust is to support the regularization of customary land holding in rural communities by initiating, on a pilot basis, participatory community titling and registration approaches to increase opportunities for adopting sustainable livelihoods strategies by participating beneficiaries. The project aims to directly encourage land improvements and production augmenting investments that benefit at least 1500 -2000 poor rural families (approximately 7- 9000 people) living in customary tenure communal areas by providing tenure security and access to development resources and technical assistance.

The goal of the project is defined in terms of security of tenure and poverty alleviation by promoting reforms that guarantee equitable access to land and land delivery services. The project objective is to regularize customary land ownership through titling and registration in the pilot districts, and to help raise farm incomes by encouraging land improvement investments and agricultural productivity thereby contributing to the reduction of poverty within the population of beneficiary landholders, including women.

The proposed project seeks to address three critical challenges of rural development in Malawi:

1. support land tenure regularization, titling and registration,
2. strengthen local institutions, mechanisms and regulations for (effective and efficient) customary land administration, and
3. improve opportunities for rural livelihood strategies by improving access to land and investment resources necessary for building the asset base of the poor to improve and sustain livelihoods.

Achievement of these objectives would be consistent with the broad framework for statutory integration of customary tenure reforms into poverty reduction strategies formulated in the Poverty Reduction Strategy Paper (PRSP) and efforts to improve food security and rural livelihood systems.

The project will, according to current plans, have four components:

1. Participatory customary tenure regularization, titling and registration;
2. District land registry capacity development and modernization;
3. Sustainable livelihoods, credit and extension systems; and
4. Project Implementation, Management and Evaluation.

The project will be implemented in three districts: Rumphu in the Northern region, Kasungu in the Central region, and Chiradzulu in the Southern region. These districts, and especially Chiradzulu, have been selected because they have had a long history of customary land administration problems, including evidence of high population pressure on land, conflicts between TAs, and previous public land and commercial agricultural policies that adversely affected the status of customary land rights of traditional communities.

The pilot areas of Rumphu, Kasungu and Chiradzulu have a conducive agro-ecological environment for the growing of a diverse range of crops. Both Kasungu and Rumphu provide examples of areas with a growing smallholder estate sector, and potentials for a transformation from subsistence to market-based surplus production and an emerging agro-industrial economy. These are hoped to provide support and sustainability of the project. Lessons learnt from these pilot areas will be used to replicate the customary titling in other areas of the country.

The project was still in the planning phase when we carried out our study, so it is too early to say anything about its success. Still, it can be seen as a crucial pilot project for the customary land reform, which will give valuable information that should form an important basis for further refinement of the reform approach.

## **5. The Logic of Land Market Formation and Characteristics of Land Markets**

Several factors have been highlighted in the economic literature as contributing positively or negatively to the development of land markets. These factors include; land scarcity and unequal distribution of land; imperfect markets for non-land factors of production; risk, seasonality, risk, shocks and imperfections in intertemporal markets; government policies and projects; and traditional institutions that substitute for, stimulate or hinder land markets formation. We will give an overview of factors that are important for the understanding or rationale of land market formation, for how such markets tend to work, and for how they may affect social welfare. We also highlight some important differences between land rental markets and land sales markets in how they may relate to poverty and therefore poverty reduction.

### **5.1. INCREASING LAND SCARCITY AND EQUALITY OF LAND DISTRIBUTION**

As the relative scarcity of land increases due to population growth and concentration, the marginal value<sup>15</sup> of land increases. The value of land also depends on the land productivity and dependence on land for survival and production for sale. Africa has been seen as a continent characterised by land abundance. However, with population growth and much of the population concentrated in some parts of the continent land scarcity is growing and leading to very small farm sizes and emerging landlessness in some parts of Africa, such as parts of West Africa, Central and East Africa (highlands), and parts of Southern Africa. Access to land is crucial when access to non-farm sources of income is limited as it is in many of these very poor and agriculturally dependent economies. The limited possibility of further subdivision of farms now leads to growing landlessness and crowding on very small farms, and this is also likely to change the nature of land markets. Important questions are whether the land markets can serve as ladders or windows out of poverty. Some may be able to improve their welfare by renting in and buying land, while others may be able to do so by renting out or selling their land and search for alternative livelihoods.

Zimmerman and Carter (1999) argue that land scarcity alone is not sufficient to create a market for land. The second requirement is that there must be sufficient heterogeneity such that at single market price there are both willing sellers and willing buyers. The same is illustrated in a village economy-wide framework by (Holden, Taylor & Hampton 1998).

With increasing land scarcity demand for land increases and this demand may be satisfied increasingly through land markets, as access through other means, like through squatting, land clearing, and inheritance, is increasingly becoming difficult (Sadoulet, Murgai & de Janvry 2001).

### **5.2. LAND AS AN IMMOBILE RESOURCE**

The facts that land is an essential factor of production in tropical agriculture and that all other factors of production have to be brought to the land and outputs afterwards transported from the production location to the locations for consumption and sale, have pervasive implications for how rural economies function in terms of market characteristics (Binswanger & Rosenzweig 1986). The decentralised nature of production and considerable transportation costs related to input and output markets cause markets for inputs and outputs to deviate from perfectly competitive markets that depend on the assumption of zero transaction costs. The immobility of land also leads to a spatial

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<sup>15</sup> This is the benefit of an additional unit of land.

limitation of land markets. Especially land rental markets require that both parties interact and either carry out activities on the land or monitor these. Contracts may also be repeated between the same agents in rental contracts, while land sales are more one-shot deals where one party is tied to the land while the other is released. This spatial dimension of land markets cause their functioning to be location-specific and land prices to depend on more than land characteristics and exogenous prices.

### **5.3. IMPERFECT MARKETS FOR NON LAND FACTORS OF PRODUCTION**

Economic production theory states that, if agricultural production were subject to constant returns to scale, and if every other factor except land, were to be perfectly marketable at the same fixed prices for each household, whether buyer or seller, and if finally the output market were perfect then household could adjust its use of factors to the size of its land holdings (Bliss & Stern 1982). Therefore, there would be no need to adjust the size of cultivated land area one way or the other if adjustments can take place in other markets.

However, market imperfections are common in rural markets in developing countries, and the efficiency implications of market imperfections have been a controversial issue since Marshall claimed that share tenancy was an inefficient institutional arrangement (Otsuka & Hayami 1988; Singh 1989).

High transaction costs and imperfect information cause market imperfections and non-separability of production and consumption decisions in poor rural economies. These imperfections in non-land factors create a need for adjustment through the tenancy market according to the household non-land factor endowments.

Adjustment of cultivated area through the land rental market may be constrained by transaction costs, creating a price band. Thus, depending on the resource balance and the transaction costs in the land rental markets, a given household might have a choice to belong to a class of tenants, landlords, or owner-operators (neither tenant nor landlord) (Bell & Sussangkarn 1988; Skoufias 1995; Tikabo, Holden & Bergland In press).

#### **5.3.1. Labour market imperfections**

Labour market imperfections are due to off-farm employment constraints and moral hazard<sup>16</sup> problems with hired labour. Moral hazard with hired labour requires supervision of workers. The effective labour supplied by hired workers therefore, depends on the amount of family labour working on the farm, which is assumed to combine effective input and supervision, as well as on the area of land cultivated ( Feder 1985; Carter & Salgado 2001).

Landlords may face high costs of extracting labour effort from hired workers due to adverse selection<sup>17</sup> and moral hazard. As a result, hiring labour is a costly way of making up for shortages of family labour relative to land endowments, inducing landlords to rent out land instead. This is particularly the case for landlords with limited labour for supervision (e.g., those that are absentee or old aged, or have high opportunity costs) or with limited experience in supervision (Eswaran & Kotwal 1985). Crops with complex, hard-to-observe labour processes are more prone to tenancy. Landlords may also run substantial risks of not securing sufficient access to labour at peak periods.

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<sup>16</sup> A hazard arising from any nonphysical, personal characteristic of a risk that increases the possibility of loss. It arises due to asymmetric information due to imperfect observability of actions.

<sup>17</sup> Adverse selection occurs due to hidden information about the quality of persons or products and this causes overrepresentation of poor quality products or persons in the market.

This can be detrimental to profitable cultivation of crops, whose timing of operations is crucial. Therefore, crops and technologies that increase reliance on timely labour effort will thus promote tenancy (Otsuka and Kikuchi, 1992).

The importance of labour market imperfections is also confirmed by Swinnen and Vranken (2003), that households with more adult members rent in significantly more land. Endowments of the non-land factors e.g. male labour force, oxen, and farm experience, significantly affect the probability of participation as well as the degree of participation in the land rental market. Households poor in these non-land factors tend to rent out land while households rich in these non-land factors tend to rent in land (Tikabo, Holden & Bergland In press). This indicates that adjustment in the land rental market is a response to imperfections in the markets for oxen traction, male labour and farm skills.

#### **5.4. SEASONALITY AND RISK, IMPERFECTIONS IN INTERTEMPORAL MARKETS AND SHOCKS**

Rain-fed agriculture, which dominates in tropical agriculture, particularly in Africa, is constrained by the seasonal and often unreliable pattern of rainfall which also imposes strict timing constraints for optimisation of input and output relations. Production risk is not only related to unreliable rainfall but also to pests and diseases. The delay between input decisions and inputs purchased till the time of harvest and output may be sold to generate income to pay for the inputs, also creates a problem of smoothing consumption over time. Shocks, e.g. in terms of droughts, create a need for insurance. The fact that such shocks tend to hit a larger area simultaneously lead to covariate risk that again limits the possibility of neighbourhoods to have internal insurance because all are affected simultaneously. Such shocks have economy-wide effects on prices. E.g. food prices go high when everybody have to buy food due to the drought and asset prices drop if assets are sold to generate sufficient money to buy expensive food. It is important to keep in mind that the role of land markets may be different in such an economy from the role in another more developed economy, but also that land markets may play different roles in different states of nature (e.g. in drought vs. normal years). The dynamics of evolution of welfare, resource distribution and of functioning of markets, including land markets, may be complex and is still subject to intensive research. One of the issues is whether these types of economies lead to poverty traps<sup>18</sup> and whether and what interventions may be needed to bring such economies out of the poverty trap if it exists .

The land rental and sales markets may serve as substitutes for intertemporal markets<sup>19</sup> for credit and insurance and for other insurance mechanisms like family networks, safety nets and buffer stocks when the capacity of these is insufficient. Based on research in West Africa Zimmerman and Carter (1999) find that the strongest demand for a land market comes from the collapse of traditional risk management institutions and the desire of low wealth agents to use the market to buffer unmediated production risk. Distress sales and rentals may therefore be second-best responses due to such imperfections in other markets and the limited availability of substitutes to these markets.

One way that risk-averse households protect consumption levels is through consumption credit and insurance mechanisms. Another way, common in low-income economies, is to diversify economic activities and make conservative production and employment choices. Households thus tend toward limiting exposure to shocks that can be handled with available credit and insurance (Morduch 1995). Land markets can also emerge as a source of cash safety net where cash constrained households

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<sup>18</sup> A poverty trap is any self-reinforcing mechanism which causes poverty to persist.

<sup>19</sup> Intertemporal markets are markets that allow transactions across time periods e.g. to smooth consumption over time, to protect against shocks and to stimulate investment.

solve immediate cash needs. The land rental market provides a temporary solution when insurance and credit markets do not work and when family networks are insufficient as a safety net (Laffont & Matoussi 1995; Tikabo and Holden 2003). In some cases, rentals seem to be used as a short-term coping mechanism by households hit by AIDS (Drimie 2002). While many of the regulations that had historically precluded the development of land rental markets have been eliminated, land reform policy and strong tenancy protection laws in some of the countries will affect the development of the market.

It may be questionable whether it is good policy to stimulate this role of land markets. It may be better to improve the imperfect or missing intertemporal markets or the alternative safety nets to reduce the risk of falling into a poverty trap through distress sales. Distress rentals may, however, be a temporary solution that has less severe negative effects while the positive effects may also be substantial, depending on what the alternative would be. Typically, the person that opts for a distress rental will have little bargaining power and the other party may be able to exploit the situation and offer her a poor deal. Sometimes distress rentals may be long-term and payments very low.

## **5.5. INTRAHOUSEHOLD DIVISION OF LABOUR, RESOURCES AND DECISION MAKING**

If household decision-making is not captured adequately by a unitary household welfare function or a single decision-maker (household head) on behalf of the household, it may be more appropriate to use a bargaining model to assess intra-household decision-making. Responses of households may be different in such a framework than in the simplified unitary framework. Both responses to policies and exogenous shocks may be different and so may be their welfare effects and their distribution among household members. And it becomes harder to predict the outcomes of such policy changes or shocks. The power balance and degree of cooperation among household members may vary across households but may also vary systematically with cultural norms and other institutional characteristics. Power and coercion may also matter for how households in extended family networks and villages cooperate and get access to local resources.

Examples of implications of such intra-household and extra-household effects include work by Udry in Burkina Faso, Goldstein and Udry in Ghana, and Bezabih and Holden in Ethiopia (Udry 1996; Goldstein & Udry 2005; Bezabih and Holden 2006). Udry (1996) find that land productivity on land controlled by females is farmed less intensively than similar plots controlled by males within the same family and that this leads to an output loss of 6% because of this inefficiency in factor allocation within the household. Goldstein and Udry find evidence that land rights depend on power relations among members of social groups. The security of tenure depends on the position in relevant political and social hierarchies. They find that tenure insecure people fear to leave their land fallow. Particularly women are found to fallow their land less and therefore achieve much lower yields. Bezabih and Holden (2006) find that land productivity is lower on land owned by female-headed households than land owned by male headed households and this difference is also present on rented out land. It appears that female landlords are less able to find good tenants and to enforce good land management than male landlords. This may be because male landlords are more able to use threat of eviction as an instrument to enhance land productivity on rented out land (Bezabih & Holden 2006). In Ethiopia widows and divorced women may also risk losing their land right even though the land law (proclamation) states that they are entitled to half the land upon divorce. The in-laws may use coercion to take control over their land.

## **5.6. LAND RENTAL MARKETS VS LAND SALES MARKETS**

It is very important to distinguish between land rental and land sales markets. We include short-term as well as more long-term leasing into rental markets. We also include share tenancy which also may involve cost-sharing and inter-linkage of credit and other markets as well. Rental markets involve temporary transfers of use rights to land while land sales markets involve permanent transfer of a wider set of property rights. The costs of permanent transfers of land are many times higher than that of temporary transfers and the buyer therefore has to mobilize a much larger sum of money, something which may be difficult without access to credit. Land sales also typically require more elaborate formal procedures that tend to increase the transaction costs involved, while land renting may be informal or formal depending on the type and duration of the contract, trust among the parties, and policy requirements. Land rental markets may be important for short-term enhancement of efficiency but may not induce sufficient incentives to invest in land unless the investor is granted a return to the investment. This may be taken care of in longer-term rental arrangements and through secure private property rights.

In some of the poorest provinces of China, rental markets have emerged rapidly over the last decade and are now consistently more important as a means for land redistribution than administrative reallocation. A study by Deininger and Jin (Deininger and Jin 2002) suggested that both the redistributive and the efficiency-enhancing impact of land rental markets exceed that of administrative land reallocation and that the role of such markets is likely to increase with diversification of income sources, out-migration, increased levels of education, and accumulation of capital in non-farm enterprises. Contrary to fears that land rental markets might lead to accumulation of land in the hands of the rich and powerful, greater emphasis on markets as compared to administrative reallocation in this case appears to provide greater benefits to poor but efficient producers who have few alternative opportunities for using their labour endowment (Deininger 2003).

## **5.7. LAND MARKETS, LAND DISTRIBUTION AND POVERTY**

Tenancy contracts may serve as instruments for the landless to gain access to land and for landowners to adjust their ownership units into operational units of a size closer to their optimum (Sadoulet, Murgai et al. 2001). In providing an entry point into farming, tenancy for the landless holds promise for eventual land ownership and vertical mobility in the 'agricultural ladder.' In their study on access to land via tenancy in several countries Sadoulet, Murgai and de Janvry (2001) found that in the more developed countries, the percentage of farms with rented-in land (either by pure tenants or owner-tenants) increases with farm size, reaching very high percentages: 75% in the U.S. and Belgium, 47% in Spain, and 35% in Italy. Hence, large farms use rentals more frequently than small farms to increase the size of their operated areas. In developing countries, they found the pattern to be exact opposite. In Brazil and the Philippines, small farmers use rentals more frequently (reaching 60% in Brazil and 51% in the Philippines) to increase the size of their operated areas. In Pakistan and Bangladesh, rentals are most frequent in intermediate size farms, 5 ha in Pakistan and in Bangladesh. This supports the hypothesis that land is leased in by large farmers in the developed countries to achieve economies of scale while rentals go to small farmers in the developing countries to help landlords access cheap labour through land rental contracts.

Tikabo and Holden (2003) find evidence in Eritrea that landlords typically are poor and often female-headed households with insufficient labour and draft power to operate the land themselves. They therefore rent it out to less poor tenants that have the necessary resources to operate the land

efficiently. A similar pattern is found in different parts of Ethiopia by Holden and Ghebre (Holden and Ghebre 2005), Kassie and Holden (Kassie and Holden 2006) and Bezabih and Holden (Bezabih and Holden 2006). Bellemare also find this kind of reverse tenancy in Madagascar but here the explanation seems to be different from that in Eritrea and Ethiopia (Bellemare 2006). In the first two countries oxen ownership tends to be the crucial driver of land renting because oxen are crucial for land cultivation and markets for oxen renting and ploughing services are largely missing. In these countries more or less frequent land redistributions have been used up to recently to avoid or minimize landlessness and sustain an equal land distribution. With initial equal sizes of owned holdings and a skewed distribution of oxen the land rental market leads to a more skewed distribution of operational holdings (Holden and Ghebre 2005). Holden and Ghebre (2005) also find evidence of economies of scale in the oxen-based farming system in Tigray in Ethiopia as larger farm holdings are more likely to rent in land and tend to rent in more land. At the same time landlessness is also growing in Ethiopia because land redistributions have stopped or been put on hold.

Zimmerman and Carter (1998) use parameters from Burkina Faso to demonstrate that a land market can lead to concentration of land on the hands of wealthier but less efficient landowners. This is caused by imperfections in inter-temporal markets (credit and insurance) forcing poor landowners to go for distress land sales when land prices are low.

Deininger and Binswanger (1999) state that promotion of land sales markets may be less important for enhancement of efficiency and may have negative effects on equity in environments with imperfect credit and factor markets. They therefore consider promotion of land rental markets as much more important for rural development in poor rural economies. Land sales markets should therefore only be promoted at a later stage in combination with enhancement of other factor markets.

This implies that land rental markets may have an ambiguous effect on the skewness of the distribution of operational holdings while land sales markets tend to lead to more skewed distribution. Land rental markets may be important as a safety net for the poor and allowing landless people access to land. They may also allow landed households that are poor in non-land resources to get an income from their land.

## **5.8. POLICIES THAT HINDER LAND MARKETS**

Inappropriate land policies constitute a serious constraint on economic and social development in a number of respects that are of great significance for developing countries. Insecure land tenure, outdated land laws, and slow or dysfunctional institutions of land administration can restrict private investment, undermine good governance, and reduce the ability of local authorities to raise taxes. Highly skewed distributions of landownership and patterns of land access that discriminate according to gender or ethnicity limit the ability of decentralized market mechanisms to put land to its best uses (Deininger 2003).

### **5.8.1 Prohibition of land markets**

Laws that prohibited land transactions have been common in many countries until recently and private property rights to land are still not legalised and land sales markets are prohibited in many countries. Many countries have imposed restrictions on sharecropping arrangements because of the beliefs that such rental contracts lead to inefficiency or exploitation of tenants. Land-to-the-tiller policies have played an important role in many countries and this may have restricted the willingness to rent out land and this may have contributed to Marshallian inefficiency in sharecropping

arrangements in e.g. India (Otsuka 2002). Empirical research in sharecropping provide mixed evidence on the issue of Marshallian inefficiency and the large theoretical literature has become very diverse and gives no simple answer to the relationship between sharecropping and the efficiency and equity implications of such land rental arrangements. Many countries have therefore removed the restrictions on such rental arrangements.

While there is a trend in form of removal or relaxation of these restrictions in many former socialist and communist countries, state ownership of land is still the constitutional basis in many of them. The fear that the capitalistic economy would exploit the poor and the working class is at the root of these anti-market policies. The failure to develop a good alternative and the collapse of the Soviet state have led to a range of reforms that implies an increased recognition of regulated markets as an instrument to promote economic development in former socialist countries. The transition from a socialist economy to a more liberal market economy is not straight forward, however. This also includes the transition from state ownership and control over land resources to and institutional environment that enhances the utilization and development of the land resources as well as the rest of the economy. Careful sequencing of reforms is required to minimise efficiency losses and to develop a health economy that enhances the welfare of the whole population. The powerful elite may be able to capture the lion's share of the resource rents while the masses may be thrown into poverty during the transition. Old ideologies may also still be influential and hinder market development. It is evident that China has been much more successful in its transition than the former Soviet states have been. Land rental markets have played an important role in the transition in China while land sales markets are still prohibited.

Some of the fundamental policy issues that can hinder development of the land markets, as outlined by Deininger, are poor investment climate, lack of credit market access, low local government revenues, poor accountability and transparency, and social unrest (Deininger 2003).

## **5.9. TRADITIONAL INSTITUTIONS THAT SUBSTITUTE OR HINDER LAND MARKETS FORMATION**

### **5.9.1. Customary tenure and land reform**

Customary tenure rules may prohibit or hinder land market formation. Even if the evolutionary property rights theory holds, it is likely that institutional development is lagging behind in situations with rapid population growth and structural changes in the economy. This opens for benefits from a benevolent state taking actions to make forward-looking land reforms. Still, it is far from easy to design good reform policies that build on existing customary systems. Customary tenure systems may be very complex and may even be poorly understood by policymakers. The variation in customary systems, like with the coexistence of matrilineal and patrilineal systems in Malawi, imposes additional challenges to a land policy reform that should identify reform solutions for both of these within a unified law. Customary tenure systems may contain various discriminatory rules that the new reforms aim to eliminate while the local power structures may make this more or less difficult. In such a situation it is likely that it is easier to reform rules that discriminate against the more powerful, e.g. men in the matrilineal system than it will be to reform rules that discriminate against the less powerful, e.g. the women, in the patrilineal system. With emphasis on the promotion of investment, for which men are more responsible, there is an efficiency and growth argument for giving them stronger tenure security and rights in the matrilineal system while a similar argument may not be presented with the same strength for giving women equal tenure rights in the patrilineal system. These conditions may also affect how the new reform will be implemented, interpreted and used by the various local stakeholders, including men and women within family networks.

### **5.9.2. Local elites and chiefs control land and land transactions**

Local elites or Chiefs may use their power to benefit from and control the distribution and transactions of land. This may affect the actual land distribution and may increase the transaction costs in the land markets if they are allowed to operate. This may limit the access to land for some and enhance the access of others and efficiency and equity concerns may not be the main drivers of the reallocation mechanisms. However, decentralisation and democratisation processes can possibly make such processes more transparent. Establishment of transparent decentralised land conflict resolution mechanisms can be an important part of a land reform where local power structures seem to be a constraint to efficient and equitable development. Implementation may not be easy and is likely to require a lot of resources.

### **5.9.3. Communal land ownership**

Transactions costs may explain why communal land ownership is better than private ownership for certain resources under certain circumstances. Explanations for this are discussed in detail in the large theoretical and more empirical literature on public goods. Non-rivalry and non-exclusiveness have been proposed by Randall as more appropriate concepts to understand this (Randall 1983; 1987). Increasing population pressure and other pressures may cause a collapse of communal land management regimes but not necessarily so (Baland & Platteau 1996; Platteau 2002). There are many examples of well functioning local commons.

### **5.9.4. Ethnicity and trust**

There is evidence of ethnicity affecting market formation and access to various types of markets (Fafchamps 2004). This may be due to lack of or lower level of trust in people from outside one's own ethnic group. However, it may also be due to or based on social pressure and thus be a second-best solution associated with inefficiency (Macours 2004). Ethnic and other social conflicts and policies that lead to increased tenure insecurity may in combination restrict transactions to ethnic or kinship circles (Macours, de Janvry et al. 2004).

## **5.10 POLICIES THAT STIMULATE LAND MARKETS**

### **5.10.1. Market friendly land reforms**

Formalisation of secure private rights to land is the basis for formal land sales markets. Such formalisation may take place in a piece-meal way or may be implemented in a large-scale sweeping reform. The latter would be very expensive and is beyond the capacity of most poor countries and this may explain why many have chosen the first approach, allowing people to get titles to their land upon request while having to pay the costs of land registration and surveying. Such costs tend to be very high and tend to favour the rich as most poor people cannot afford to go through the process. This has prompted some countries to try more low-cost land formalisation approaches. An example is Ethiopia where alternative low-cost land registration and certification approaches have been implemented at large scale in different regions of the country. The local communities have been involved in the process limiting the need for external expertise. Local tools and methods have been used for the registration and demarcation of plots. The process has been implemented at an impressive scale and speed. It may still, however, be too early to start to measure the impacts of this reform except in the Tigray region where it was first implemented in 1998/99. These large-scale experiments should give many useful insights of high relevance for other countries that think about formalisation of land rights. It is important to notice, however, that the Ethiopian land reform does not go all the way and establish private property rights. The state still owns the land and the land certificates are to provide secure user rights. This includes the right to transfer the land to children

and rent out the land for a limited time period while land sales are still prohibited. The costs have been estimated to be less than US \$ 1 per parcel even in the most expensive scenario of these low-cost certification approaches ( World Bank 2006).

Another question is whether it makes sense to formalise land rental markets through law. This may involve requiring formal written documentation of all such contracts and having local registries and local administrations to keep such records. The purpose of this could be to improve security for both parties in case of violations of the contracts and resolving consequent disputes. On the other hand, such formalisations also involve transaction costs for the parties involved and involves more local administrative costs. It is not obvious that the benefits will be higher than the costs of such formalisations. The extent of trust and local land disputes as well as local demands for such formalisation should be assessed before implementation. One option may be to only require registration and formal documents for more long-term land rental arrangements.

De Soto (2000) is a strong advocate of formalisation of land rights and seems to consider informal land rights and informal land markets as inferior (“extralegal”) to formal land rights and land markets. A transaction cost approach implies applying some caution in relation to jumping to conclusions on this. In high-trust societies, where land disputes are uncommon, informal land rental markets may be efficient and involve lower transaction costs than formal land rental markets.

### **5.10.2 Customary land reform**

As regards *customary systems*, the legal recognition of existing rights and institutions may be more effective as a first step rather than attempting to establish formal structures. Based on eligibility according to community membership and the creation or codification of internal rules and mechanisms for conflict resolution, the legal recognition of customary systems can significantly enhance the rights of the occupants of the land. The demarcation of community lands can remove threats of encroachment by outsiders. In this way, though private ownership rights might not be recognized, lease terms can be extended, and leases can be made inheritable.

Ownership titles reduce the fears of landowners that their land will be taken from them if they rent out. Hence, there are bi-lateral gains from clear and secure titles. There is a vast set of opportunities to regularize titles and enforce property rights. The process of titling, like enclosures, can lead to expropriation of the weaker groups (Binswanger et al., 1995). Thus titling can, in practice, lead to greater concentration of land and to the dispossession of groups that have enjoyed land rights under the traditional system. Wealthier and well-connected individuals can use their information and lobbying advantages to claim land over less informed and less well connected individuals (ibid). Therefore, titling should be systematic rather than on demand, and accompanied by publicity campaigns.

Traditional tenure regimes often fail to recognize *women's rights*. Specific attention to these rights can be paid in at least two ways. One low-cost approach that can greatly enhance the welfare of women is the provision of a secure legal basis for the joint ownership of land by spouses or, at least, the prevention of the disposition of a household's land assets by husbands without the consent of their wives. The second approach would involve the establishment of legal instruments so that women can maintain their rights to land upon the death of their spouses.

## **6. ASSUMPTIONS VS EMPIRICAL EVIDENCE: THE RATIONALE AND IMPORTANCE OF LAND REFORMS FOR ECONOMIC DEVELOPMENT AND POVERTY REDUCTION IN MALAWI**

Land reforms rest on the belief that existing institutions that relate to land are having deficiencies and that land reforms can eliminate or reduce these deficiencies. The basis for such beliefs or assumptions may be political, ideological, historical, and more or less based on empirical evidence and careful scientific analysis. We will in this chapter try to confront some of the major arguments used for land reforms with scientific and empirical evidence that can be found in Malawi and elsewhere regarding these.

### **6.1. TENURE SECURITY AND INVESTMENT**

#### **6.1.1. Expressed assumptions in official documents**

Based on the assumption that customary land tenure is insecure and an impediment to rapid agricultural development, the GOM (Government of Malawi) facilitated (soon after independence) privatisation of customary land as “freehold” land to promote agricultural development. The Customary Land (Development) Act (Cap. 59.01), the Local Land Boards Act (Cap. 59.02), the Registered Lands Act (Cap. 58.01) and the Special Crops Act (Cap. 65.01) were enacted for this purpose. This led to the development of the *Ndunda* system (land titling) in Lilongwe West (see Ch.2) and the rapid expansion of burley and flue-cured tobacco and some other crops on leasehold land.

There are also opposing views, e.g. Mkandawire expressed that there is no evidence in the support of the assumption that under customary tenure peasants utilise their land less efficiently and invest less (Mkandawire 1992). Place and Ostuka (2001) found some evidence that early investment on land is reduced in matrilineal matrilocal households, but no significant differences were observed in older matrilineal matrilocal households.

The Presidential Commission of Inquiry on Land Policy Reform (PCILPR) questions this assumption in their preliminary report ( PCILPR 1998, p.48) based on the experiences with the *Ndunda* system in Lilongwe West. They indicate that neither tenure security nor a robust land market has developed in this area. Titles in the area were given to lineage groups and not to individual households. One of the effects of this has been that both chiefs and the Minister have lost access to this land for leasing out. They think that the *Ndunda* system has eroded customary institutions of the matrilineal groups, contributed to more boundary disputes and has increased transaction costs related to land demarcation, registration and dispute processing (p.50).

The PCILPR (1998) also concludes that the Land Act of 1965 is a fundamental source of tenure insecurity on customary land (p.49). This is both because the power of chiefs has been considerably reduced and customary land has become open for sale and lease arrangements that have compromised the interest of the people.

If the power of chiefs and ministers over titled land has been lost, this may indicate that titleholders have stronger tenure security than they would have had without these titles. In 2006 we found land markets, especially rental markets, but also sales markets, to be very active in the area. Therefore, the argument that land markets have failed to develop no longer seems to hold. One village has sold all its land to a company and we were informed that this was not a distress sale. Land prices have gone much up in recent years. Whether this is only due to the proximity to Lilongwe or partially also

due to the formalisation of titles is hard to say and requires careful empirical research for assessment. Such a study has not been carried out yet.

The Control of Land (Agricultural Leases) Order of 1989, with the Amendment in 1996, introduced a prohibition of conversion of customary land to leaseholds. Does this mean that the problem has been solved already? It should safeguard against further conversion of customary land to estates. On the other hand, the new land reform that promotes conversion to customary estates may allow new large estates to emerge if there is a local consent.

### **6.1.2. Empirical evidence of tenure insecurity**

The type of empirical evidence we came across in our visits was the expressed insecurity of men in matrilineal and matrilocal marriages in Malawi and of women in virilocal (*chitengwa*) marriages. Their situation upon death of the wife/husband or divorce is insecure and they may have to leave the land and their children. For the men it was expressed that this may possibly have a negative effect on their willingness to invest on the land and Place and Otsuka found some evidence on this for investment in tree planting (Place and Otsuka 2001). Women in matrilineal and virilocal marriages similarly are very tenure insecure. If a new law can strengthen the land rights and tenure security of the spouse in cases of death of the wife or the husband this may be good especially when the spouse has nowhere to go and is too old to remarry.

Another weak group that may have insecure property rights are orphans (Mbaya 2002). HIV/AIDS has caused a large increase in adult mortality in Malawi and many children have become orphans and may depend on grandparents or other relatives for their survival. Their rights to the land of their parents may also be insecure. Relatives may take the land without compensation. Growing land scarcity also causes increasing conflicts over land within families.

In Lilongwe West we were informed that some people living close to the main road had sold their land because they feared to be evicted by the Government. Instead they were now renting in land further away from the road. It is, however, also possible that such land sales could be attractive and profitable as land prices were high near the road and much lower further away from the road. It is, however, also possible that urban people with better information are able to buy land at a low price by misinforming those sitting on the land. Lack of knowledge about the law and the rights may be to the disadvantage of the poor and the better off are likely to take advantage of this. If also the law and system for compensation for land takings is unclear in case of urban expansion this may affect the perceptions of tenure security and also the perceived value of land and land prices in such locations. The law revisions suggested by the Special Law Commission (2006) should strengthen the rights of the poor and ensure proper compensation in case of land takings, IF the law is properly enforced and the information also trickles down to those it should protect. The big IF is that enacting a new law requires follow up in terms of information dissemination.

In the resettlement group from Thyolo (Kalungu group) that had settled in Machinga district with assistance from the World Bank project, the Community Based ("Market Assisted") Rural Land Development Project, we found that many of the households felt tenure insecure in the new area. This had caused 10 of the 36 households in the initial group to return to Thyolo. They had arrived in November in 2005 and we visited them in March 2006 so they have not stayed long in the area before they decided to return. Part of the problem was that they felt they were not accepted by the neighbouring villages and were excluded from the social structures and networks in the new area. They did not feel they belonged to the TA and have never been visited by the chief. They had not yet received titles to their land and the local people encroached on their allocated land to cut trees.

The other resettlement group that had been resettled within the district Machinga, had also not received the titles yet but were feeling tenure secure. Most of them had not moved far and were well integrated in the local social system. The men perceived it as an advantage that they were receiving the certificates and wanted them in their names. They also thought that certificates would increase the security of tenure for their children in case of future policy changes. They were therefore willing to pay up to 500 MK for the certificate.

One group in Malawi that may feel more tenure insecure is the group of non-residents with freehold land titles. Since they are given the choice between becoming Malawian residents or having their freehold title converted to leasehold they are opposing the land reform. It is believed, however, that long-term leasehold should give sufficient incentives to invest. The question is also what other options this group has. The new land policy also considers the case where large estates are owned by shareholding companies and where shares may easily switch owners. The new land policy clearly aims at limiting foreign ownership and rights of non-residents to underutilise Malawian land resources. Whether this will have less negative than positive effects on investment on leasehold land remains to be seen.

## **6.2. FORMALISATION OF LAND RIGHTS AND ACCESS TO CREDIT**

### **6.2.1. Assumptions**

The New Land Policy (2002, cap.4.22.1) states:

“A priority issue for this land policy is the comprehensive registration and titling of customary land interests in Malawi. From the experience of titling programs elsewhere, the design and initial investment in a Customary Land Titling and Registration exercise will consume a lot of energy and resources. However, once the infrastructure is in place, the benefits far outweigh the cost”.

Furthermore cap. 4.22.2 states:

“Statutory recognition of customary estates will place all land on the same competitive footing, as far as their collateralized values are concerned, and will avoid any further cultural and legal conflicts”.

And cap. 4.22.3 states:

“The primary and secondary real estate mortgage markets will have access to large volumes of high quality real property assets with appropriate legal documentation to fund, as the credit and financial markets are expected to do in supporting the nations economic development aspirations”.

One of the basic assumptions that are underlying formalisation of land rights is that land titles will facilitate access to credit as land can be used as collateral (de Soto 2000), this will allow the conversion of “dead capital” to “living capital” and allow the poor to enter the formal economy. De Soto has also been engaged by the Norwegian Government to support the land reform process in Tanzania and is also a prominent member (co-chair) of the High Level Commission on Legal Empowerment of the Poor (HLCLEP). The HLCLEP will work to promote the poor’s property rights and also see this as an important way to improve the poor’s access to financial services.

Based on this international perspective we will give a brief overview of some of the empirical evidence on the links between land titling and access to credit for the poor in various parts of the world. We will then look at some of the empirical evidence on land rights and access to credit in Malawi.

### **6.2.2. International evidence on land rights and access to credit**

The empirical evidence on the effects of land titling on access to credit and investment are surprisingly mixed (Conning & Udry 2005). Studies in Thailand have provided evidence of strong positive effects of land titling on credit supply (Feder and Feeny 1991; Siamwalla 1990). On the other hand, when it comes to studies in Africa, such effects were not found in Kenya (Carter, M., Wiebe & Blarel 1991) and Burkina Faso (Brasselle, Gaspard & Platteau 2002). Another study in Paraguay found a strong wealth bias; the credit supply effect was significant only for farmers above a certain wealth threshold (Carter, M. R. & Olinto 2000). The limited or insignificant effects may be due to the poor functioning of these markets and problems with land foreclosure. Legalisation of land foreclosure itself is problematic because it implies increased tenure insecurity for the landowners. This implies that transaction costs related to providing credit to small farmers are so high that they will be rationed out

Cross-sectional data from Ghana, Kenya and Rwanda on the incidence of land improvements and on land yields provide little support for the view that limitations under indigenous law on the right to transfer land are a constraint on productivity (Migot-Adhola et al. 1991).

### **6.2.3. Empirical evidence on credit supply in Malawi**

Mkandawire & Phiri (1987) studied the relationship between estates and smallholders in the Central Region in the 1980s. They found that the estate owners had better access to inputs and credit than the surrounding smallholders and the tenants they engaged to grow tobacco on their estates. However, they also found that many of the smaller estate owners faced capital constraints and only were able to obtain small loans from the commercial banks. Long-term leasehold contracts with the government did therefore not give security for the banks to provide sufficient credit for estate land to be efficiently utilised. The commercial banks had some bad experiences in the 1970s that made them reluctant to provide medium-term farm development credits to agricultural estates. Smaller estates tended to have larger difficulties in getting credit at all and in getting the amounts that were demanded. Some banks provided only “bridging loans” to cover costs after a good crop has been established (inspected by the bank) and up to marketing. Table 6.2.3 gives an overview of how credit was distributed across various size categories of estates.

**Table 6.2.3. Distribution of credit across different size categories of estates**

Variable	0-15 ha	15.01-30 ha	30.01-100 ha	> 100 ha	Sample mean
Sample size, no. of estates	27	33	31	28	119
Received credit	8	14	20	13	55
Average credit received, MK	4488	3792	19948	107144	34197
Share of total credit given, %	1.9	2.8	21.2	74.1	100

*Source: (Mkandawire, Jaffee et al. 1990).*

We see from the Table that the distribution of credit was highly skewed as the smallest two estate size categories together received only 4.7% of the credit.

In Lilongwe West where land rights were formalised just after independence, it appears that credit has not become more available. This may, however, also be due to the fact that titles were given at family/lineage-level and not at household level. This makes it more difficult to use the land for mortgaging (Sahn and Arulpragasam 1991). We should, however, state that we came across no good

impact assessment studies for the Lilongwe West land-titling program. A carefully designed survey and analysis may still be implemented here to carry out such an analysis.

The New Land Policy document (MLPPS 2002) also states that many estates, especially in the North, are seriously indebted and have ceased to operate. We have heard informally that many estates have used land as collateral in the past. We were also informed that commercial banks have stopped giving credit with land as collateral because they have had big problems getting their money back through selling of the collateral. This may be related to the low profitability in commercial agriculture in Malawi in recent years, causing both failures to repay credit and low prices of estate land due to low demand for large land parcels in locations with poor market access.

The World Bank funded Community Based Rural Land Development Project helps smallholders to buy land from estate owners and this also helps the estate owners to service their debts to banks and to the Government (unpaid ground rent). This project also provides credit to the resettled households.

It may be seen both as a market failure and a policy failure if the estate owners are unable to sell the land when there is such a high demand for land among the near landless population, of which many live even in the neighbourhood of these same estates. This may also be seen as a rationale for a policy intervention with potential win-win effects. Still, there is no guarantee that such an intervention will give a positive net social return. The success of credit programs in these areas will depend on the market access and therefore investment in basic infrastructure that we observed to be insufficient in the resettlement areas we visited.

#### **6.2.4. Conclusion**

It is not realistic to believe that land registration and land titling quickly leads to better access to credit for poor rural households. While this approach may have potential in urban and peri-urban settings, there may be a long way to go in rural settings. The evidence from Malawi indicates that credit access is restricted also for smaller estates and many of them have gone out of business, casting doubts about the superiority of large farm sizes after the removal of policies that favoured large farms.

### **6.3. FORMALISATION OF LAND RIGHTS AND EFFICIENCY OF LAND MARKETS**

#### **6.3.1. Assumptions**

The agricultural development policy in Malawi emphasized food self-sufficiency in the smallholder sector and capital-intensive export production in the estate sector from Independence and up to the late 1980s. Conversion of customary land to leasehold land for estates caused an increase in estate land to 1,148,000 ha in the early 1990s. The estate sector's share of GDP grew from 13 to 30% in 20 years (PCILPR 1998), p.25). The formal market for land leases was therefore an important part of the Malawian agricultural policy and favoured the large-holder sector. The formal market implied that in fact customary land was sold to the GOM as it would not return to customary tenure at the end of the lease.

The PCILPR had in its mandate "to propose appropriate arrangements that would provide equal protection to all categories of land users while ensuring the operation of land market transactions" (PCILPR 1998), p.44). The overall objectives were to recommend a land policy that would promote economic efficiency, sustainable land use and socially equitable land tenure system (p.3). This indicates that land markets were considered important for enhancement of land use efficiency.

The New Land Policy (2002, cap. 4.22.2) states:

“Once a comprehensive register of property interest has been created, the transaction cost associated with dealing in land will be substantially reduced”. This indicates that formalisation of property rights will reduce transaction costs in land markets and thus enhance efficiency.

### **6.3.2. Empirical evidence**

#### **Transaction costs in relation to land sales**

Our findings on the transaction costs in Lilongwe West are illustrative:

<b>Cost Item</b>	<b>Cost, MK</b>
Price of land, per ha	75 000
Payment to Village Headman	12 500
Payment to Group Village Headman	25 000
Payment to Senior Group Village Headman	37 500
Payment to Traditional Authority for signature	62 500
Land surveying and titling	25 000*
Total cost	237 500
Transaction cost	162 500 (68.4%)

\* Minimum land surveying cost is MK 25 000. The amounts put up are based on the assumption that 1 ha = 2.5 acres as the figures were provided on per acre basis. In addition comes some other fees, like stamp fee of MK500.

In an area with a lot of land sales it is easy to understand that this provides a lot of income to the local leaders. This may cause some local chiefs to push for more land sales (while others oppose it) and they may have sufficient powers to substantially influence the amount of land being offered for sale. However, the high transaction costs also create a huge price band between the seller and the buyer and this can reduce the incentives for voluntary sales and lower the efficiency-enhancing potential of the land sales market. Careful empirical research is required to disentangle the different effects.

Land surveying costs are minimum MK 25 000 and this also contributes to scale economies making it vary hard for anybody to buy and register a small piece of land. This favours establishment of large holdings rather than smallholdings. This may indicate that formalisation of land rights may be prohibitively expensive for poor smallholders unless the costs of land registration and certification can be substantially reduced. Otherwise formalisation will primarily favour large and rich farmers who can afford to buy land and have it surveyed.

#### **Transaction costs in relation to land rentals**

In our brief informal village surveys in central and southern Malawi we found evidence of very active short-term rental markets for land. About 50-90% of the households in the two villages in Lilongwe West that we visited were either renting in or renting out land. Short-term (one year) fixed rent contracts dominated. Land-scarce households with sufficient cash and non-land factors of production rented in land while more land-rich and cash-poor and labour-poor households were more likely to rent out their land. Rental prices varied from 1,500 to 4,400 MK/ha/year. Own farm sizes varied from 0.4 to 2 ha and rented plots were 0.4-0.6 ha.

The resettlement group from Chimbalanga village in Thyolo (Kalungu group), see Village Report 3 in Appendix, informed us that the large majority of them had depended on renting in land in their

area of origin (10 out of 12 men interviewed). Typically they had 0.1-0.2 ha of land themselves and in addition they rented in 0.1-0.4 ha of land at a price of 1,250-5,000 MK/ha/year. In the resettlement area they had received 2 ha each. The WB-funded project paid for the land to the estate owner. They had negotiated the price themselves to 16,500 MK/ha.

The other resettlement group that had resettled within Machinga had also been active in the land rental market before they resettled. Most of them (9 men out of 15, and 12 women out of 12) reported that they had rented in land from neighbouring estates through 50-50 sharecropping arrangement (growing maize). Seven of the men were landless and the others owned 0.1-0.6 ha and had sharecropped 0.1-0.4 ha of land. They were very happy with the 2 ha they now had received each.

In the village Likoswe in Chiradzulu between Blantyre and Mulanje the TA chief prohibited all land sales and land rentals but still informal land rentals were common according to villagers. The fact that many chiefs want a share of the rent or price in relation to land transactions may suppress land sales and land rental markets but may also cause land rentals to be hidden. This may explain why few studies have observed much land renting in Malawi. The actual occurrence of such rentals may therefore be more widespread than many perceive. It may also be because of the cultural perception that land should be free, giving some negative connotation to land renting.

We are of the impression that land rentals are on the increase and may have evolved from traditional systems of land borrowing. At present, informal land rental markets may be important to enhance land use efficiency. They may also contribute to reallocate land from land-rich to land-poor households in a cost-effective way. They may therefore be more conducive for land use efficiency and equitable land access than formal land lease markets and land sales markets because the formal markets tend to involve high transaction costs.

Informal land rental markets may be more efficient than formalized land rental markets given that there is sufficient trust in a society. We observed that most rental contracts were oral and sometimes involved witnesses in the villages that we visited. Such transactions were typically also not reported to the village head unless one of the parties was an outsider to the village.

A formalisation of short-term rentals of land will involve costs of reporting and registration in the village registry and will possibly require some payment for this. These are added transaction costs. On the other hand, if willing “buyers” (tenants) and “sellers” (landlords) in the rental market could more easily meet and be more fully informed about the local demand and supply it is possible that these added benefits of improved access to information outweigh the costs. More research is required to investigate this.

### **6.3.3. Conclusion**

There should be considerable room for reducing the transaction costs in the formal land sales market. We recommend further research on land markets in Malawi. We are not aware of any good studies of the land markets in the country. The efficiency of such markets may vary greatly from village to village and from country to country. Careful empirical studies are therefore required to assess the efficiency of current informal land rental markets and the efficiency enhancing potential of more formal land rental markets. We contest the view that formal land markets necessarily are better than informal land markets from an efficiency- as well as an equity/poverty-reduction-perspective. For formalisation of land rights and land markets to be successful it requires careful planning and implementation and use of methods that can minimise the transaction costs while at the same time

enhance the benefits in terms of efficiency and equity/poverty-reducing effects. The approach used so far in Malawi is far from such an approach.

## **6.4. SUPERIORITY OF LARGE-SCALE FARMING: FARM SIZE AND EFFICIENCY**

### **6.4.1. Assumptions**

Malawi's export-oriented agricultural-based economic policy is based on the assumption that large-scale estate agriculture is superior to customary land tenure systems that are characterised by low input use and low productivity (Sahn and Arulpragasam 1991). Development of commercial agriculture is seen as a vehicle for growth and poverty reduction through generation of employment. This implies the belief that the estate sector was highly effective and productive, and with strong backward linkages, creating employment. This perspective dominated during colonial time but returned again in 1967. In relation to passing of the Customary Land (Development) Act 1967, the Local Land Boards Act 1967, and the Registered Land Act 1967, the president categorically stated that the country would not develop under customary land tenure (Kamchedzera 1992).

### **6.4.2. International empirical evidence**

The relationship between farm size and land productivity has been a controversial issue and subject to a lot of research. Many studies have found an inverse relationship between farm size and land productivity (Carter 1984; Benjamin 1995; Heltberg 1998). Some of the inverse relationship may be explained by variation in land quality but many studies find an inverse relationship even after controlling for land quality although it is questionable how much of the land quality variation that the different studies have managed to control for. The explanations for the persistence of the inverse relationship have been imperfections in labour and land markets causing larger farms to face higher labour costs due to their dependence on hired labour as compared to small farms that depend only on family labour. The difference in labour costs was not eliminated by larger farms renting out the land to smaller farms because of imperfections in the land market. The inverse relationship has also been attributed to land-to-the-tiller policies that were causing landlords to be reluctant to rent out their land or use short-term sharecropping contracts only and this may again have contributed to Marshallian inefficiency in sharecropping as has been found in India (Shaban 1987; Otsuka 2002).

A study in Sudan found a positive relationship between farm size and land productivity and an efficient land rental market (Kevane 1997). The combination of a poorly functioning credit market and better functioning labour and land rental markets caused cash-poor to rent out their land to more cash-rich households that were able to purchase inputs and hire labour and get higher yields than the cash-poor households operating very small farms. This illustrates that variations in the factor market characteristics in addition to technology may affect whether smaller or larger farms are more productive.

### **6.4.3. Empirical evidence from Malawi**

At independence Malawi inherited a dual agricultural economy that the Government did little to change in the following years. The Special Crops Act reserved the cash crops burley and flue-cured tobacco, tea and sugar for production on estates only. Rapid expansion of tobacco farming on new estates in the Central Region followed and the estate sector's contribution to export income, GDP and employment increased till the mid 1980s. Estate workers had at that time increased to 7% of the number of smallholders (Sahn and Arulpragasam 1991).

Mkandawire and Phiri (1987) studied land use on estates and smallholder farms in Mchinji and Kasungu districts in Central Region of Malawi. They found the average proportion of land under cultivation to be 21%, ranging between 5.5 and 59% among 10 estates in Mchinji, and 36%, ranging

between 3 and 49% in Kasungu. This was below even an extensive crop rotation system with two years cropping and three years fallow that some estates practiced. On all estates they found land that never had been cultivated. At the same time there was no virgin land around the estates and land on neighbouring smallholder farms was intensively cultivated while these smallholders had no access to the estate land except as tenants. It appears that the estates had been allocated more land than they were able to efficiently utilise. Many of the estate owners had limited capital. Many of them were public servants and could get only small loans from commercial banks. They also had problems hiring skilled managers on their estates and this caused poor management that again caused debt repayment problems. And there was no legal system for reallocating this excess land back to customary tenure. Increasing land scarcity around the estates caused land-scarce households to encroach on the estate land that was left uncultivated but this led to disputes between the estate owners and the encroachers.

PCILPR(1998) identified problems with the customary/leasehold land interactions due to corruption and severe land scarcity in certain districts where much land had been converted. This may indicate that they were sensitive to the trade-off between economic efficiency and equity. However, they also found evidence of poor utilisation of estate land as much estate land was found to be unutilized (“idle”) while land pressure was very high on customary land in some districts like Thyolo and Mulanje. There were some problems in defining “idle” land and a large discrepancy between different studies, especially on customary land (p.32).

Poor quality land may be more in need of a rest period (fallow period) after a period of cultivation in order to restore its fertility and this may be essential for the short-term productivity as well as the longer-term sustainability of land use. This implies that it is erroneous to perceive fallow land as “idle” land.

Sahn and Arulpragasam (1991) found an extremely low productivity on customary holdings in Malawi and a general failure to innovate. They explained this by high levels of implicit taxation of smallholder producer prices on export crops, legal prohibition of production of burley and flue-cured tobacco, tea and sugar on smallholder farms, quantity rationing of fertiliser, and credit constraints. The agricultural policy also contributed to the suppression of rural wages. The estate sector was favoured by getting the lion’s share of the available credit at negative real rates of interest, while very little was done to provide credit for the smallholder sector. Tenants obtained credit from their estate landlords but they had to pay interest rates in the range of 40-140% (Mtawali 1989). Kydd (1990) attributed the stagnation of smallholder productivity in Malawi to poor extension service and poor agricultural research.

Sahn and Arulpragasam (1991) attributed the low utilisation of land on estates also to the fact that 40% of the estate owners were absentee landowners (Mkandawire, Jaffee et al. 1990), that land rents were very low and were often not collected at all, making land a costless asset. Sahn and Arulpragasam (1991) also questioned the reasons behind the productivity differential between estates and smallholders. Higher tobacco yields on estates were due to their monopoly on production of burley and flue-cured tobacco while smallholders only could grow other and less productive tobacco types which they also received much lower prices for. There are no economies of scale in production of burley tobacco above farm sizes of 0.5 ha according to (Carr 1988). Lele and Agrawal (1989) calculated domestic resource costs for production of burley and flue-cured tobacco and found these to be lower for smallholders than they were for estates.

Other explanations for low utilisation of estate land include quota limits on tobacco, transportation constraints, large areas of non-arable land due to steep slope, waterlogging or forest cover on large

estates (Mkandawire, Jaffee et al. 1990), and limited access to labour due to exploitative tenancy contracts that caused a high turnover of tenants (Nankumba 1990). It was only on the larger estates that Mkandawire, Jaffee et al. (1990) found considerable unused areas that potentially could have been cultivated. They found utilisation percentages of up to 50% for small estates, varying between 19% in Machinga, 21% in Rumphi, 35% in Kasungu and 42% in Lilongwe. Table 6.4.3 summarises some of the findings for estates of different size categories (Mkandawire, Jaffee et al. 1990).

**Table 6.4.3. Intensity of labour and fertiliser use on estates of different size categories**

Variable	0-15 ha	15.01-30 ha	30.01-100 ha	> 100 ha	Sample mean
Sample size, no. of estates	27	33	31	28	119
Total no. of tenants	79	119	235	1189	1622
No. of permanent workers per estate (incl. Tenants and spouses)	16.5	17.6	31.7	143.6	49.9
Mean leasehold area, ha	12.7	21	51.1	277.6	87.3
Mean cropped area, ha	6.4	9.1	18.8	61	23.2
Mean cropped area, %	52.5	45.6	37.8	23.2	
No of perm. workers per ha cropped area	2.6	1.9	1.7	2.4	2.2
No. of perm. workers per ha leasehold area	1.3	0.8	0.6	0.5	0.6
Intensity of fertiliser use, kg/ha cropped area	266	213	256	474	383

Source: (Mkandawire, Jaffee et al. 1990)

The Table reveals an inverse relationship between intensity of labour use per ha leasehold area and size of the estate. However, intensity of labour use is more u-shaped when we look at labour use per unit cropped area. A more careful analysis would require a correction for differences in land quality across size categories. Some of the large estates have large areas of non-arable land (Mkandawire, Jaffee et al. 1990). There are also systematic differences in types of estate crops, the age of estates, and their location, across size categories. Tobacco estates were established more recently and their sizes tend to be much smaller. A special study of tea estates revealed that 64% of the area was used by tea, fuelwood plantations, forest or other crops (*ibid.*).

Table 6.4.3 also reveals that fertiliser intensity was much higher on the largest estates. This may also be related to the credit constraints faced by smaller estates.

Sahn et al. (1990) explained the estate sector's boom in the 1970s and 1980s by the favourable policies for this sector. The sector was provided access to land at low prices, access to subsidised credit and access to cheap labour as rural wages were suppressed by the taxation of the smallholder sector. We may also add that it benefited from more favourable international prices at that time compared to what has been the case later. Still the sector failed to develop to a dynamic and innovative estate sector. It also had very limited trickle down effects on smallholders through provision of employment because the salaries remained very low also when tobacco prices were high. The leasehold rental incomes to the government were also very small because they were set very low and were often not collected at all.

PCILPR(1998) also indicated that some of the best and most fertile land is under freehold and leasehold tenure. This may imply that this land is less in need of fallowing than poorer quality customary land. With such systematic variation in land quality across land categories it also becomes tricky to compare land productivities across tenure regimes and farm sizes. The literature on the relationship between farm size and land productivity documents the importance of controlling for spurious correlation between land quality and farm size and some have attributed the inverse relationship to a reverse causality such that smaller farms are smaller because they have higher land productivity rather than the other way around. This may very well be the case also in the smallholder sector in Malawi where smaller farm sizes are found in the south because the higher land quality may have facilitated higher population concentrations. A proper analysis of the relationship should take into account and control for systematic variation in land quality across farms and farm plots. It should also test for alternative explanations for inverse or positive correlation between farm size and land productivity. Imperfections in labour, land, other input and credit markets are key candidates to explain productivity differentials.

A positive relationship between farm size and productivity was found in smallholder agriculture in Malawi using farm panel data from the 1980s combined with programming models (Dorward 1999). This absence of an inverse relationship was explained by extreme capital and land scarcity in southern Malawi. Poor households may be forced to work for wealthier households during the peak season to get food and this may have adverse effects on their timing of own farming operations and the land productivity of their small farms. The inverse relationship may therefore be reversed because the poor small farmers are too poor to be efficient (Holden and Binswanger 1998). Land and capital-poor households may also gain from renting out their land to wealthier farmers that can afford both to rent in land and to buy fertilizer for maize and tobacco production. The econometric analysis in Dorward (1999) has some limitations as it was not possible to correct for soil quality that could be correlated with farm size. Land productivity was found to be higher in the Mzuzu area where land size is larger on average than in the sample from southern Malawi, indicating such positive correlation between farm size and land productivity. Land scarcity and intensive land use may have caused soil mining and falling land productivity over time in southern Malawi where fallowing no longer can be practiced. The inverse relationship may also be explained by the agricultural policies in Malawi that discriminated against small farmers in the 1980s. With the changes in these policies it is not obvious that the findings hold now 20 years later.

Tchale (pers. com.) has tried to test the relationship between farm size and land productivity using data from the recent Integrated Rural Household Survey. The land quality data used in the analysis are only at survey enumeration area and local soil variation is therefore unobservable. He did not find a significant relationship between farm size and land productivity.

A recent study on efficiency of tobacco production found higher efficiency on larger plot sizes while access to credit only partly could explain this difference (Hazarika and Alwang 2003). Poorer access to productivity-enhancing inputs and credit for the smallholders who tend to have smaller plots may be the explanation for this.

***What can we read out from our village studies in terms of factor market imperfections and their likely implications?***

We can only form some tentative hypotheses from our village visits when it comes to the relationship between farm size and efficiency and eventual benefits from land redistribution. It appears that informal land markets are already active and contribute to more efficient land use and improved access to land for the land-poor. Particularly, this may be the case on and near the partly abandoned and poorly run estates that are now candidates for being sold and used in the CBRLDP

program. If land disputes can be controlled and minimised and proper implementation secured there could be win-win effects from this program.

Informal land transactions that we observed appeared to be driven by market imperfections in land and credit markets and a skewed distribution of land resources. Those with access to credit or with more capital may be able to rent in land and intensify land use by using higher levels of purchased inputs like fertiliser. Capital-poor and labour-poor households may rent out their land and get a rental income. It also appears that the poorest households are too poor to be efficient farmers and therefore survive by renting out their land and doing *ganju*. Without this opportunity of renting out their land they would probably not have been able to achieve the same land productivity as their tenants because of their labour and capital constraints. Given that their renting out decisions are voluntary given the constraints they face, they are likely to be better off this way than by trying to farm the land themselves.

If those renting in land are more land-poor than those renting out the land, land renting may lead to a more equitable land distribution for operational holdings than for own holdings. However, detailed data are required to assess how the variation in own holdings relates to the variation in operational holdings and again how land productivity is on owner-operated land vs. on rented land. The real counterfactual for rented land is not there because there may be a selection bias related to choice of land for renting and land productivity may be related to unobservable land characteristics. Careful sampling, data collection, and analysis is required to do an good analysis of this. Such a study has not yet been done in Malawi.

## **6.5. DISTRESS LAND SALES VS. HOUSEHOLD VULNERABILITY**

### **6.5.1. Assumptions**

A common assumption is that formalisation of land rights will create landlessness because poor people will sell their land out of distress. Some countries have prohibited land sales to minimise landlessness and avoid that poor people sell their land because of this. This may also be a strategy to prevent excessive rural-urban migration and development of urban slums.

### **6.5.2. Empirical evidence**

Cain (1981) provides evidence that land sales market participation may be driven by distress due to imperfections in credit and insurance markets rather than by land productivity differentials. Such distress sales were more likely to take place where or when other safety net options were unavailable. Imperfections in credit markets also make it very difficult or impossible for poor landless households to buy land.

We came across only one qualitative study that provides some evidence from Malawi on informal land sales (Mbaya 2002). Mbaya (2002) has made an assessment of how households respond to sickness due to HIV/AIDS-infections of some family members. She found that renting out of land may be a response to short-term stress while land sales may be a response to deep and long-term distress when other resources have been depleted. She also found that such situations may lead to unauthorised sales by some irresponsible family members without the knowledge of other family members. She also found that HIV/AIDS has made land more important because the illness tends to narrow the livelihood base and ultimately makes land the only and last source of their livelihood. Selling of land is therefore a sign of a very desperate situation. She also found that HIV/AIDS may make the land market more active because households try to derive benefits from their land at times when they are less able to cultivate the land themselves.

Mbaya (2002) also discussed the impacts of adult deaths due to HIV/AIDS on tenure security of women in patrilineal societies and in virilocal marriages in matrilineal societies where they are at risk of losing the land upon death of the husband. Women used different strategies to ensure that they could have access to some land, including remarriage to gain access to new land, never remarry to have access to part of the late husband's land and accepting the practice of wife inheritance through a relationship with the late husband's brother. Likewise, the land rights of orphans are also threatened and disputes may occur in relation to the disposal of such land. Mbaya (2002) indicated that HIV/AIDS caused more violations of the legal rights of women and orphans in cases when the legal instruments have been put in place to outlaw customs, practices and laws that discriminated against women. Dispossession of women and orphans of their land is therefore claimed to have become more common with increased frequency of deaths due to HIV/AIDS.

Mbaya (2002) also points to an ambiguity in the National Land Policy (2002) where the phrase "those with the ability and resources" is used as a qualification for awarding secure access to land as this may undermine tenure security of women and orphans.

### **6.5.3. Discussion**

This illustrates another area where more research is clearly needed in Malawi.

There is growing international consensus that land sales markets may lead to concentration of land on fewer hands causing increasing landlessness and this may not lead to more efficient land use (Zimmerman and Carter 1996; Deininger and Binswanger 1999). This may limit the possibility of using the land sales market as a ladder for the poor to escape poverty. The land rental market may have a more important role in this regard. Besides the land rental market may also be better as a safety net against falling into poverty while distress land sales may represent evidence of insufficient safety nets. The land policy may potentially have an important role to play to facilitate that land serves as a better safety net for the poor.

## **6.6. LAND MARKETS, LAND DISTRIBUTION AND POVERTY**

### **6.6.1. Assumptions**

The absence of critical thinking and distinction between land sales markets vs. land rental markets in the Malawian land policy documents is astonishing. We therefore present some general assumptions from international debates here. These are:

1. Land sales markets will lead to a concentration of land on fewer hands, lead to increased landlessness and more skewed land distribution.
2. Land rental markets can help the poor to get access to land vs. land rental markets are used by rich landlords to exploit poor tenants.

### **6.6.2. Empirical evidence**

#### **Land rental markets**

We came across no good recent studies of tenancy markets in Malawi. There is some historical evidence and studies of tenancy on tobacco estates in the country and some broader studies from the late 1980s (Boeder 1984; Nankumba 1988; Nyanda and Shively 1989; Nankumba 1990). These older studies provide evidence of exploitation of poor tenants by rich estate owners.

The change in policy, allowing smallholders to grow tobacco may have had considerable impact on land tenancy arrangements on estates but we found no recent studies on this.

Our findings in our quick village survey revealed that liquidity and credit constraints may explain some of the participation in land rental markets in the form of distress rentals. Balancing labour/land ratios seems to be another important driver of land rentals. We found many of those who have resettled in the CBRLDP project had been land-poor tenants before they joined the program. At least some of the most land-poor and landless therefore seem to manage to rent some land and this should pull in direction of more equitable distribution. It is less clear whether the land rental markets around Lilongwe lead to a more or less egalitarian distribution of operational holdings but they are likely to contribute to more efficient land use.

### **Land sales markets**

The "market-assisted" land redistribution project, namely CBRLDP, pulls in the direction of more equitable land distribution.

### **6.6.3. Conclusion**

The scarcity of good recent studies on tenancy and land sales markets makes it hard to design appropriate pro-poor land reforms. While land reforms may be important there is a high risk that poor design and poor implementation may yield unwanted outcomes that are anti-poor rather than pro-poor. Good empirical research would provide a much stronger basis for a well-designed pro-poor land reform.

## **6.7. LAND SCARCITY, SOCIAL CONFLICT AND CORRUPTION**

### **6.7.1. Assumptions**

There is a fear in Malawi that conflicts over land may escalate in a similar way as in Zimbabwe and this fear is also underlying the recent land policy reform. It is believed that increasing land scarcity and near landlessness can create severe and growing land disputes unless action is taken to develop policies that prevent this from happening. There is also a concern about how increased land pressure affects perceptions of tenure security and strategic behaviour to claim rights (PCILPR 1998, p.33). Such competition includes the interaction between estates and surrounding villages, urban and peri-urban areas with competing agricultural and non-agricultural interests, government and traditional authorities, within family/lineages where eviction threats may become more widespread, and male-female gender balances that vary with traditions of inheritance and location of settlement in relation to marriage, divorce and death of a spouse.

Based on these threats, PCILPR argues for the urgency of establishing better land dispute resolution mechanisms at local level. The perception is that village headmen and chiefs tend to favour those who give them bribes (p.84).

### **6.7.2. Empirical evidence**

Mkandawire and Phiri (1987) found signs of increasing tension between estate owners and surrounding smallholders in the Central Region. Large areas had been converted from customary tenure to estates and estate land was underutilized while land scarcity had become a problem for the neighbouring smallholders. Those that were unable to borrow or rent in land therefore resorted to encroachment on unutilized estate land and this tended to lead to long-lasting disputes. There were also cases where village headmen encouraged and mobilised households to encroach on estate land. This may also have been a sign of their disagreement with the TA that had allocated the land to the estates.

PCILPR(1998) identified the main categories of land disputes to be boundary encroachments in customary tenure systems and between villages, encroachment of private land, national parks and other protected areas, fraudulent disposal of customary land, conflicts between crop producers and livestock owners, including crop cultivation in *dambos* that were converted to *dimbas*.

Mkandawire and Phiri (1987) reported on encroachment by smallholders on neighbouring estates in the Central Region. Some of this encroachment was also supported and encouraged by local village headmen. TAs were found to be in a dilemma as they on the one side were expected to support development by facilitating expansion of estates and on the other side they should be custodians of the land of their communities. Inability to serve this second role would undermine their power and authority in their communities.

In Chapter 4.2.1 we have given a brief record of conflicts related to some of the early resettlement attempts in Thyolo. It is evident that great care is needed for such resettlement projects to succeed and to prevent that severe disputes occur as a result. Neighbouring villages to the estates converted to new settlements that may receive few or no benefits or even lose employment or resource access that they used to have, may take action. Claims and envy by these may contribute to conflicts and reduce the potential benefits if these problems are not properly addressed.

### **6.7.3. Discussion**

If the new land law leaves some issues unclear, this leaves more room for interpretation and strategic manoeuvring that is likely to benefit the more wealthy and influential (Peters 2004). Increasing land scarcity may also trigger more intense competition for land within extended families and may lead to social exclusion of kin.

Since the traditional authority is recognised by the state, there is a danger of them abusing their positions. There are cases where chiefs and others are selling and letting out land even in the areas where the Customary Land (Development) Act of 1967 applies. Being backed by the state, the TAs may be assuming too much power. The traditional structure and communality that used to control them is crumbling. The current economic problems may cause them to unduly benefit from their positions (Kamchedzera 1992).

We did not come across any systematic scientific studies on abuse of power. However, the role of the chiefs in relation the new land reform was a hot topic in the country in the debates on the new policy and there were negotiations about the future roles of the chiefs. The established local land committees and land tribunals for conflict resolution may be seen as a perceived need to create more democratic and transparent local management of land resources. Based on a protest by the chiefs against the apparent removal of their power over land, they have been given the chairman positions in the local land administration as well as in the land tribunals. It remains to be seen how this will work. The training of land clerks for local land administrations and establishment of proper written record should also contribute to a more transparent system. Training of chiefs as well as other committee member will be essential for the system to start to work.

## **7. ELEMENTS OF KINSHIP THEORY: PERSPECTIVES ON MATRILINEAL DESCENT**

Gendered aspects of land rights, and women's land rights in particular, will in this report be analysed with reference to so-called "traditional" and kinship-based norms of descent, succession and inheritance. Adapting such principles to local situations and changing macro-conditions, land rights are still allocated and distributed, and resource claims interpreted by small-scale farmers in Malawi. As indicated in the introductory chapter, the focus of the study is on the South and Central Regions of the country, where matrilineal rules of access, ownership and inheritance to land traditionally have dominated the rural scene. This chapter will therefore present and critically discuss some elements of anthropological kinship theory that are of particular interest when seeking to understand the fairly complex land tenure situations and challenges in southern and central Malawi. In this context a better understanding of matrilineal norms and principles may be crucial, especially in a further discussion of women's land rights in Malawi.

### **7.1. LINEAGES, MATRILINEAL AND PATRILINEAL DESCENT**

*Matrilineal* and *patrilineal* principles, norms and practices have to do with what anthropologists have traditionally identified and studied as "kinship systems", or more specifically, systems of kinship and descent. In this context, a useful definition of *kinship* is that it refers to networks that connect individuals as relatives. Marriage has usually been seen as the central institution of kinship in providing for the biological reproduction of kinship groups. 'Descent' more specifically refers to social rules identifying individuals with "a selected category of their kin for specific purposes" (Holy 1996:305). Rights to land and access to resources are in many societies key among such purposes. The British anthropologist Edmund Leach even rather polemically claimed that "kinship systems have no 'reality' at all except in relation to land and property" (Leach 1961:207).

As a "category of related individuals" people can be said to form a *lineage* when they trace descent from a common ancestor. When individuals are related as kin through women – or through a female line – we may talk of *matrilineal* descent, while individuals related through a male line – from father to son(s) – represent *patrilineal* descent. However, no society is entirely matrilineal or patrilineal either with regard to descent, inheritance, succession or authority. Rather, one may say that patri- and matrilineal descent refer to systems of norms and rules providing "a balance of interests and rights between the two sides of the family [male and female] with a predominant emphasis on one side or the other" (Richards 1950).

Different perspectives and interpretations of what kinship means and its role in society have been put forward in anthropology since the American lawyer Lewis H. Morgan first presented an evolutionary theory of kinship in the second half of the 19<sup>th</sup> century. In Morgan's evolutionary scheme, matrilineal systems represented an earlier evolutionary stage than patrilineal systems. Accordingly, patrilineal systems were also seen as more civilized and advanced than matrilineal systems. Writing within the framework of the evolutionary thinking developing at the time, Morgan also argued that matrilineal systems – with progress – would evolve into patrilineal systems. This is a view that over time gained popularity far beyond anthropological circles.

Around the mid-20<sup>th</sup> century, in the 1950s and -60s, the structure and function of systems of kinship and descent – both patrilineal and matrilineal – as organising principles in African societies were key issues in anthropological scholarship (Radcliffe-Brown & Forde 1950). The internal logic of kinship and lineages as functional systems were analysed, and the logical implications of the functioning of

these ‘systems’ as regards relations of authority, succession to positions, and the transfer of land and property between generations were systematically elaborated. Later on considerable debate, reinterpretations, and waves of criticism have questioned the formerly dominant perspectives on kinship as systems of social roles and functional relationships.

The common view within anthropology today is that kinship should rather be studied and understood in terms of cultural symbols and meanings than as organising principles in social systems. Still, some of the academic writings of 1950s and -60s are of considerable interest today. They spell out assumptions underlying key arguments on relations between men, women and economic activities in ways that can also be used to analyse current policies and debates – especially with regard to the reality of kinship in relation to land and property. In contemporary anthropology, there has been a rethinking of gender issues inspired e.g. by feminism, and this has to a large extent influenced what is taken for granted and what is identified as research topics. At the same time, kinship and gender studies are usually seen as two discrete fields of study – though a more unified approach could produce interesting synergies with regard to both questions and answers (Yanagisako & Collier 2004).

Still in the absence of such synergies with regard to the understanding of patrilineal vs. matrilineal “systems” of descent, we can see clearer than before that the assumption of patrilineal descent as the norm earlier was dominant is most external analysts’ – as well as colonial administrators’ – perspectives on kinship in Africa. From elsewhere in Africa, there is also empirical evidence that at least some men in matrilineal groups, when getting acquainted with patrilineal principles and practices, have adopted these, either because it appeared advantageous for men to use these models as resources in their own negotiation of rights and interests in the household, or because men’s roles in lineage and village contexts were strengthened by external actors (Braga 2001). In the field visits carried out for the present study we also recorded several examples in this regard.

## 7.2. KINSHIP THEORY AND “MATRILINEAL PUZZLES”

In academic works matrilineal norms and practices have often been framed as a problem or a puzzle, the so-called “matrilineal puzzle” which was introduced to kinship theory by the British anthropologist Audrey Richards (1950). At that time, structural-functionalism was the dominant paradigm of analysis in social anthropology, having replaced theories of evolution that associated matrilineal systems with a more “primitive” stage of human development than patrilineal systems. Within a structural-functionalist framework Richards was concerned, and puzzled, by the position of men in matrilineal descent systems. Her question was: How can these systems, where men have ambiguous and complex roles and in part dual loyalties, actually work? The debate that followed also focussed on what it was that made matrilineal descent groups different from what was seen as the norm – that is, patrilineal groups.<sup>20</sup>

An important underlying assumption in analyses of kinship and matri- vs. patrilineal groups has been that the elementary family – father, mother, and children – is the basic universal unit of society. A related assumption has been that of the “dominant sex” vs. the “weaker sex” (Douglas 1969). That is, in kinship theory it was a “constant” that the role of men was defined as “having authority over women and children” (Schneider 1961:6). Accordingly, the issue of the man’s control over his wife also became an issue of theoretical debate and analysis. Schneider argued that in patrilineal groups,

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<sup>20</sup> The famous French anthropologist Lévi-Strauss wrote in his work on *Les structures élémentaires de la parenté* (1949, pp. 149-50): “Consider the artifices to which a matrilineal and matrilocal society must resort to create an order even approximately equivalent to that of a patrilineal and patrilocal society” (quoted in Douglas 1969:122).

both lines of authority and group membership would be passed on primarily in the male line, whereas in matrilineal groups they would be “separated between males and females” (Schneider 1961:7). In patrilineal groups then, a man could both have authority as a lineage group member, and as a husband and father. In a matrilineal group, however, a man's authority would be “separated” from his role in his own household, and primarily be based on his membership in his matrilineal group. Here his authority would be vested in his roles as brother or uncle, “instead of” the role as husband and father. The underlying assumption was that such as set-up for male authority was not “natural”.

However, a further assumption in works on kinship theory concerned the function of *lineages* (both matri- or patri-lineages) in society: If they should work as effective decision-making groups, it was assumed, there must be internal differences in authority and power (Schneider 1961:4). That is, somebody had to make decisions on behalf of others. The assumption that such a differentiation is necessary, combined with the “constant” of men's authority over women and children, logically led to a focus on men's positions of authority both in patrilineal and matrilineal groups. By implication it was claimed that: “Positions of highest authority within the matrilineal descent groups will, therefore, ordinarily be vested in statuses occupied by men” (Schneider 1961:6).

Taking the assumed “principle of male authority” to its logical conclusion, some analysts held that it was the positions of uncle and brother that actually formed the backbone of matrilineal groups. While patrilineal descent was seen as passing from a man through his son, and from him to his son again, they claimed it would also be most accurate to talk of matrilineal descent as passing from a woman's brother to her son and from him to his sister's son (Holy 1996). With reference to patrilineal groups it has been assumed that a woman who marries a man and goes to live with him and his family, will adapt to a fairly dependent role as in-marrying wife in a patrilineal descent group, but at the same time occupy an important role as mother of children – in particular sons who will perpetuate the patrilineage. In-marrying men in matrilineages may be considered necessary and useful both as husbands and fathers, and in providing male labour. Still, the role of in-marrying husbands in matrilineal groups formed a key element in the so-called “matrilineal puzzle”. If the role of men is in principle that of having authority over women and children, the role of men in matrilineal groups seemed “weak”, “strained”, contradictory, and somehow difficult to explain.<sup>21</sup>

### **7.3. RULES OF RESIDENCE**

A further distinction should, however, be made here. Matrilineal descent and inheritance of land rights in the female line, do not mean that a married couple necessarily settle to live with the woman's relatives and in the village where she is a member of a matrilineage and in principle is entitled to access to resources held by her family and will inherit e.g. rights to land. Taking this into account, anthropologists have distinguished between matrilineal descent and *matrilocal/uxorilocal residence* after marriage. The same type of distinction is made between patrilineal descent and *patrilocal/virilocal residence*.<sup>22</sup>

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<sup>21</sup> With regard to the role as husband, Richards held that in matrilineal societies “the man's control over his wife and her children can never be complete, except in the case of a union with a slave woman...” (1950:208). That is a wife without relatives, who is not a social person with membership in a lineage, but is in the extremely unequal position of an owner's ‘property’. Slave wives were apparently not uncommon in 19<sup>th</sup> century Malawi.

<sup>22</sup> It has been argued that more precise terms would be *virilocality* – residence with the male; and *uxorilocality* – residence with the female. These terms are now the ones used in anthropological literature and will also be used here.

In a number of societies, including matrilineal groups in Malawi, it has been found that matrilineal descent is often combined with virilocal residence. In a household, a married couple, both in patrilineal and matrilineal groups, must reach some balance of privileges and duties (Richards 1950:208). In this balance it has been assumed that it will be in the man's interest to settle with his kin and not with his wife's relatives. It has not been equally clear if it is in the woman's interest to settle with her relatives. The reason could be a certain gender bias both in the analysis of kinship and households, and in relation to land and property. This is a bias that needs to be dealt with, especially when seeking to analyse how matrilineal principles work today, how they are being adapted, and possibly changed as a response to current livelihood challenges and policy reforms.

#### **7.4. A HYPOTHESIS ON MATRILINEAL INSTITUTIONS' FLEXIBILITY AND LOCAL ADAPTATIONS TO SCARCITY AND VULNERABILITY**

A final, more general assumption to be brought up here is the issue of change and flexibility in local practices based on matrilineal vs. patrilineal principles. In an essay called "Is Matrilinearity Doomed in Africa?" the British anthropologist Mary Douglas (1969) starts by saying that "matrilinearity appears to be a fragile institution and its future at risk"; and continues with the claim that the scholarship "expended on analysing its nature tends to expose the internal strains and external pressure to which it is vulnerable". Patrilineal principles of kinship have, in historical time, been far more widely applied than matrilineal principles. This means that matrilineal kinship as it is practiced in southern Malawi and parts of the neighbouring countries today is worth some attention. Douglas' own analysis proceeds from the question: Where do we actually find matrilineal kinship? With some exceptions, she says, in general it appears to be found in regions with low-yielding agriculture (Douglas 1969:121). On this basis, she presents the following interesting argument:

The poorer an economy, the more primitive its technology, the more uncertain the yield of crops or game, the more should the pattern of distribution be wide enough to even out gluts and shortages (Douglas 1950:129).

According to Douglas, matrilinearity can be seen as "essentially a system for wide extension of kinship ties" (1969:123). She holds that matrilineal rules in defining men's and women's rights and responsibilities result in a certain openness and ambiguity in roles, including dual loyalties, which also have important social functions within a wide network of kinship ties. These network relations tend to involve continued flows of resources – both labour and food – between husband's and wife's groups after marriage (Douglas 1969). Such a quality of openness or flexibility, according to Douglas, imply that matrilineal groups as compared to patrilineal groups may be more capable of sustaining livelihoods across households in situations of high vulnerability of productive resources and uncertain agricultural yields.

Uncertainty and vulnerability is very much the situation for most smallholders in Malawi's Central and Southern regions. What is implied in Douglas' hypothesis is that matrilineal groups and networks may be relatively more effective than patrilineal groups and networks in providing basic safety-nets in situations of food shortage, failing crops and hunger. However, traditional matrilineal institutions in southern and central Malawi are at present under considerable pressure, and with the increasing pressure on land, matrilineal groups increasingly seem to be subject to internal processes of conflict and exclusion (Peters 2002). How current trends may influence livelihood situations and land tenure on the ground will be further discussed in chapter 8.

## **8. WOMEN'S LAND RIGHTS AND MATRILINEAL PRINCIPLES**

In present-day Malawi, small-scale farmers still allocate land rights and interpret land claims using kinship-based norms and rules of descent, succession and inheritance. As indicated in the introductory chapter, the focus of this study is on the Southern and Central Regions of the country, where matrilineal rules of access, ownership and inheritance to land traditionally have dominated the rural scene. This chapter will use elements of anthropological kinship theory in a critical discussion of fairly complex land tenure situations and challenges in southern and central Malawi. In this analysis the impacts of partly modified colonial legislation and more recent post-colonial policies, in a situation of increasing pressure on land and widespread poverty, are all variables that have to be taken into account. In this context, the question of women's rights to land now and in the future urgently needs to be addressed.

### **8.1. MATRILINEAL PRINCIPLES AND PRACTICES IN MALAWI**

In her much quoted presentation of "Some types of family structure among the Central Bantu", Audrey Richards (1950:207) pointed to "a remarkable degree of uniformity as to the principles governing descent and succession" of matrilineal groups in the so-called "matrilineal belt" of central and eastern Africa. At the same time, she found considerable variation in family structure and gender roles – which at the time were discussed in terms of "the man's control over his wife" (op.cit. p. 208). It may therefore be relevant in this context to make a short reference to what she pointed out as specific characteristics of matrilineal groups in present-day Malawi.

In her overview Richards singles out four types of family structure. One of these types is represented by the matrilineal Yao and Chewa ethno-linguistic groups of Nyasaland – i.e. present-day Malawi. She uses her own fieldwork-based data from Northern Rhodesia (now Zambia) to establish a "standard type" to which she compares the other types of matrilineal family structure. One of her conclusions in a comparison of gender roles is that the authority of women "seems to be higher in Nyasaland than in Northern Rhodesia" (Richards 1950:234). She relates this finding to the existence of relatively strong links between the members of the matrilineage among the Yao/Chewa. She actually pointed to the relatively high population density, and land shortage in some districts, as a factor that might account for these relatively strong ties between the members of the matrilineage. The argument would be that with a relative shortage of cultivable land, access to land through the matrilineage plays a larger role – together with access to inheritable wealth in the lineage, in the form of money, houses, and cattle. However, she points out, by 1950, "full studies of land tenure and property inheritance have not yet appeared" (op.cit. p.236).<sup>23</sup>

Focusing on the Chewa ethno-linguistic group, which at present represents about 35% of the Malawian population, the historian Kings Phiri defined matriliney as a "complex of several variables, including the nature of marriage, residence during marriage, the exercise of domestic authority, and the control or custody of children" (Phiri 1983:257). A Chewa matrilineage is generally called *bele* (breast) in Chichewa<sup>24</sup>, with reference to "all those who could trace their descent from a common ancestress" (1983:259). However, such a matrilineage will split up into smaller sections with a core

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<sup>23</sup> This implicit call for in-depth studies on land tenure and inheritance has only to a very limited extent been followed up in Malawi. After independence, the government under President Kamuzu Banda basically suppressed fieldwork-based rural studies until the mid-1980s. In an article on matriliney, land and gender focussing on the shire Highland of southern Malawi, Peters (1997) still points to the general lack of studies on land, inheritance and residence among different groups of the rural population.

<sup>24</sup> The people are referred to as *Chewa*, while the language is *Chichewa*.

of mother(s), daughters/sisters and their children – and even grandchildren. In terms of matrilineal extended-family organisation, there would be a gender-based separation of roles. The female members of the matrilineage would form a descent group called *mbumba*. As a group of kin living together, a *mbumba* could be composed of three to four generations of (basically female) matrilineal relatives. A man of the matrilineage, as brother and uncle to the women of the *mbumba*, had the role as “guardian” or “responsible relative”, *nkhoswe* in Chichewa (Butler 1976:72). As a senior male member of the matrilineage, a man (as brother or uncle) could also have authority as *mwini mbumba* (literally: owner of the matrilineal group).

Traditionally a Chewa man (or boy) wanting to get married had to render bride service – providing labour to his parents-in-law in order for the marriage to be consummated.<sup>25</sup> Among the Yao, however, the bridegroom has not been expected to render such services to his (future) parents in-law. The exchange of presents between the bride and the bridegroom’s families have apparently also been insignificant among the Yao (Richards 1950:233). And when the colonial authorities in Nyasaland actually tried to introduce and enforce a standard “marriage payment”, they did not have much success. The Chewa rejected the custom of giving bride-wealth (from the husband’s to the wife’s family). According to Richards (op.cit.), the reason was that “this would give the father control over the children of the marriage”, instead of the control over children remaining with the wife/mother’s family.

In general, the married couple’s residence, at least in the early stages of most marriages, seem to have been uxori-local<sup>26</sup>. Uxori-local marriages are commonly called *chikamwini* in Chichewa. In his presentation of the Chewa matrilineal family system, Phiri states that *chikamwini* marriages had:

... several implications for both wife and husband. For the wife, it apparently generated conflict ... between loyalty to her own kinsmen and loyalty to her husband. For the husband, on the other hand, uxori-locality meant isolation from the base of his authority in his own matrilineal village (Phiri 1983:260).

As an in-marrying man, occupying the role of *mkamwini* in his wife’s village, the husband would often be considered a “stranger”. With regard to authority of decision-making within the matrilineage, as a husband a man would be “subject to the overriding authority of his wife’s brother” (Phiri op.cit.). In his own matrilineage and village he would, however, in principle himself perform that role. From the husband’s point of view then, the best way of attending to the double roles and responsibilities in matrilineal groups often seems to have been to marry within walking distance between the wife’s and the husband’s villages – where that has been a possible option. That would permit a married man to be in close and frequent contact with his matrilineal kin as a *nkhoswe*. It would also give him a possibility to sustain and more easily claim rights to land as a member of the matrilineage, for instance in the case of divorce from his wife. Phiri reports that the majority of Chewa men in the mid-20<sup>th</sup> century would marry “within a five-kilometer radius of their own villages”. However, many men seem to have preferred to bring their wives to their own matrilineal village.

The arrangement which best suited most men ... was that in which permission was granted to the husband to take the wife to his own village after a few years of uxori-local residence. This

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<sup>25</sup> Bride service has also been common among other matrilineal groups in the region, such as the Macua in Mozambique. Cf. Geffray (2000) Geffray describes with considerable compassion, the situation and ordeal of the young men/boys rendering bride service to their (future) in-laws in a village far away from home.

<sup>26</sup> *Uxori-local* means “residing with the wife”, from Latin *uxor* – wife. This term is now used in the literature instead of *matrilocal* and refers to (post-marriage) residence with the woman and the woman’s lineage, in the woman’s village where she usually will have rights to land.

arrangement was called *chitengwa*... (1983:262)

According to Phiri, *chitengwa*<sup>27</sup> marriages were traditionally special arrangements made in response to men acquiring certain roles in their home village or matrilineage, either as village headman or chief guardian (*nkhoswe*) of his *mbumwa*. *Chitengwa* could also be practiced if the man came from a particularly wealthy lineage and had to “take care of” that wealth. Here it could be argued that such wealth (and position) would give the man a relatively stronger bargaining position in negotiating post-marriage residence. It can also be argued that in situations of land scarcity, women who were unlikely to inherit much land through their own matrilineage would be in a relatively weak position in negotiating post-marriage residence. In such situations *chicamwini* marriages might turn out as their only chance of getting married.

However, at least until the second half of the 20<sup>th</sup> century, the norm was still *chicamwini* marriages. A pattern emerged, however, of *chitengwa* marriages traditionally being associated with men of relatively higher prestige or more wealth. This pattern was also found by Lorna Butler doing fieldwork in the Lilongwe rural areas in the 1970s, where the current explanation seems to have been that males attached to “important lineages inherit gardens<sup>28</sup> from their own *mbumba* because they bring their wives to their village” (Butler 1976:5).

These patterns may, however, have been subject to fluctuation over time. Historical sources indicate an increasing incidence of virilocal marriages during the 19<sup>th</sup> century as a result of the growing slave trade at the time. By marrying slave women, men could continue to live in the locality of their matrilineage. Phiri's own research shows that as commodities in the economic transactions of the slave trade in the region, young women acquired a higher price than men (1983:264). He interprets this finding to indicate a relatively high demand for women as childbearing dependents and wives to the male members of wealthy matrilineages. A slave woman was in practice a woman without (the support of) a matrilineage. According to Phiri, the union of a man with a slave woman must have been a fairly widespread practice in the 19<sup>th</sup> century. Early in the 20<sup>th</sup> century: “*Chewa* elders still spoke nostalgically about” the practice of female slave marriages as a time when the wives “were the property of the husband, tended to abide with him permanently, and did their utmost to secure his favour” (Phiri 1983:265).

The Christian missions that started working in Malawi in the 1860s and 1870s, in part with the objective of combating the slave trade, also sought to change dominant practices in the family system of the matrilineal groups. According to Phiri:

All the missionaries (Dutch Reformed Church, Anglican and Presbyterian) stuck to the Pauline view that the husband is head of the nuclear family unit and that this authority, therefore, had to precede that of the wife or wife's guardian (1983:208).

Their teaching underlined the need for the husband's authority, and over time led to a redefinition of marriage. “Instead of viewing marriage as a contract between two families or lineages, the girls were made to view it as a contract between husband and wife on the one side and God on the other” (Phiri 1983:209). The missions' educational activities also trained increasing numbers of young men who were then able to get paid jobs, and took their wives with them when they were posted far from home. This practice required a redefinition of male and female roles and responsibilities in the

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<sup>27</sup> *Chitengwa* marriages would in contemporary anthropological terminology be called *virilocal marriages* (that is “residing with the man”, from Latin *virilis* – man, male).

<sup>28</sup> ‘Garden(s)’ is often used to refer to the cultivated land belonging to a household in Malawian villages. It refers to plots of cultivated or cultivable land, rather than land as an area with a certain extension.

household. With the male assuming the role as “household head” he was also expected to assume larger responsibilities. According to Peters, “By the first decades of the 20<sup>th</sup> century, the monogamous, ‘male-headed’ nuclear family had become a mark of the tiny elite of mission-educated Africans” (Peters 1997:193).

With the British colonial rule in Nyasaland institutionalised in the 1890s, a so-called “hut tax” was introduced. The explicit intention was to make African men work in the cash economy, providing labour for the European estates in the Shire Highlands, and later extending this (predominantly male) labour market to agricultural and mining enterprises in present-day Zambia, Zimbabwe and South Africa. (Phiri 1983; Englund 2002). As a result “labour migration became the most persistent experience” of the male population in large parts of Malawi, while the women experienced a continuous “movement of men in and out of their communities” (Phiri 1983:211). The role of women in this pattern of labour migration, according to Phiri, became more marginal than that of men in relation to the “modern world”.

When she carried out fieldwork in rural Lilongwe in the 1970s, Butler found “a surprisingly high number of female domestic unit heads,” and attributed this both to polygamous marriages, male labour migration, and ease of divorce (Butler 1976:3). Generally she described a situation in the matrilineal villages where women prefer to live close to and cooperate with their maternal kin, and where women to a very limited extent depended on their husbands, either in economic terms or in terms of social status in the village.

She also found that food provision was a full-time concern for women household members. Still there did not generally seem to be “any great pressure on husbands to work in their wives’ gardens” (Butler 1976:101). Both men and women performed almost all agricultural activities, but usually working in separate work groups. Only in the case of the major cash crop, tobacco, there seemed to be a more distinct division of labour: “Tobacco is publicly identified as a men’s crop but this may be the result of government tobacco quotas only going to men...” she writes (1976:104). Behind this was an explicit Government bias in favour of men’s role in (cash-cropping) agricultural production, which also may have introduced additional tensions into matrilineal group’s land management.

## **8.2. THE LILONGWE LAND DEVELOPMENT PROGRAMME OF THE 1960S TO 1980S: CUSTOMARY LAND TENURE AND GENDER RELATIONS**

As a key element in the “matrilineal puzzle”, the role of men in matrilineal groups is an issue that over time has appeared in several forms. It has often taken the form of an argument against matrilineal principles as “uneconomic”. This argument relates men’s access to land under customary tenure to men’s (assumed lack of) motivation to invest to increase agricultural productivity.

It must be admitted that the position of uxorilocally married men in matrilineal groups seems to have appeared both difficult and unpleasant, perhaps even “unnatural”, not only to some anthropologists and colonial administrators, but also to various writers concerned with land tenure and agricultural change (Phiri 1983:260). Husbands moving to the wife’s family or village were described as “a barrier to economic improvement”, and the argument was that “because a man was a ‘stranger’ in his wife’s village, he was naturally reluctant to invest effort and money toward the improvement of the land allocated to his [elementary] family” (Phiri 1983:260). The motivations or possibilities of a woman to invest in land allocated to her household through the matrilineage would usually not be considered in the context of the same argument.

More generally, customary forms of land holding and land use were during colonial times seen as uneconomic and unsuitable for increased agricultural production. This contention, Clement Ng'ong'ola writes in 1986, is "familiar and now, perhaps, time-worn" (Ng'ong'ola 1986:39). In colonial Malawi, however, the administration would in particular refer to "the system of matrilineal inheritance and uxorilocality in marriage prevailing in the central and southern parts of the country" as "defects" (Ng'ong'ola 1986:39). In their planning of programs to increase agricultural productivity from the late 1940s, senior colonial administrators emphasised the need for land tenure reform, "some of the evils of the matrilineal system will be overcome, if individual ownership of land takes the place of the present semi-communal system".<sup>29</sup> A report from a Conference on African Land Tenure in East and Central Africa held in 1956, again illustrates the use of the argument against matrilineal structures:

It was suggested that these aspects of the social structure discouraged the male cultivator from investing in land, and generally arrested the development of a vigorous land market with its incidental attributes like lending on the security of a land title (Ng'ong'ola 1986:39).

In the 1950s, the colonial administration made an effort to correct the alleged "defects" through optional land reorganisation and consolidation schemes. But lacking cooperation on the beneficiary side, they had little success (Ng'ong'ola 1986:39). In the early years of independent government, however, Lilongwe Land Development Programme (LLDP) was initiated to modernise land tenure – focussing on the Lilongwe area – through implementation of the Registered Land Act passed by Parliament in 1967. Starting already in 1967, LLDP was introduced as a land reform component within the larger, externally funded integrated rural development programme called Lilongwe Rural Development Programme. The programme was planned to cover approximately 1000 villages in the area southwest of the city of Lilongwe.

The overall objective of LLDP was to ascertain and record individual rights in land throughout the programme area. Group land rights ruled by matrilineal principles should be replaced with individual land rights governed by statutory law (Ng'ong'ola 1986:46).<sup>30</sup> In the implementation of the land tenure reform programme buttressed by the argument that matrilineal rules "retard agricultural productivity" (Ng'ong'ola 1986:39), in practice met with a number of confrontations between assumptions and local realities during implementation.

The stated objectives included: define and establish village boundaries; define and establish lineage land boundaries; establish land rights belonging to "families" and individuals; register family land and issuing land title certificates to individual family representatives (Nankumba 1986). Clement Ng'ong'ola in his analysis of the programme holds that it was not at all clear what should be meant by a "family unit" in this context: "It was assumed that the unit would correspond to land traditionally controlled by the *Chewa mbumba*... led by a senior male member" (Ng'ong'ola 1986:44). The project's demarcation team would in this process of tenure formalisation rely primarily on the village headmen and the male lineage members to define boundaries and ascertain land ownership. A further presupposition was that a *mbumba* as a landholding unit would control contiguous plots of land. "The reality was that most family members cultivated pieces of land located in different sections of the village or even in separate villages" (Ng'ong'ola 1986:45). A further principle in the land reform programme was to minimise the recording of one person as a member of more than one unit/group. This principle easily came into conflict with flexible arrangements of customary land tenure, and more specifically with the "dual roles" of men in the

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<sup>29</sup> Archive document from Malawi National Archives, quoted by Peters (1997:197).

<sup>30</sup> In 1969 the Malawi Congress Party – President Banda's party – also passed a resolution stating that "matrilocality" was a sign of backwardness and against development (Prof. Paul Kishindo, pers. comm.).

matrilineal group, as both *nkhoswe* – brothers and uncles in their own matrilineage, and as *akanwimi* – husbands and fathers in uxorilocal marriages and households.

What has been described above as the – at least potential – strengths inherent to matrilineal principles and practices in terms of flexibility, ambiguity and extensive networks associated with dual loyalties, clearly appeared as problematic obstacles in the context of tenure reform under LLDP. The programme efforts to promote land consolidation in order to create contiguous family land plots, and thus fulfil programme objectives in terms of formalising land holding units, were in part implemented through the creation of larger so-called “umbrella family units”. These would in addition to an “indigenous” dominant lineage resident in a village, also include more recent “non-indigenous” migrants into the area (Ng’ong’ola 1986:45). With the idea of using the *mbumba* as a model, large and heterogeneous “umbrella family units” whose members were not necessarily related either by kinship or marriage, were created by the LLDP project. These units were then used for the “exclusive demarcation and recording” of land rights (op.cit. p. 47).

According to Ng’ong’ola, the result was on the one hand a reduction in the number of “inter-unit boundary” disputes. This may be explained by project staff’s efforts to resolve and settle emergent disputes before the demarcation of “family” land units. At the same time, the project formalised a more limited number of units that could enter into inter-unit conflicts. On the other hand, the creation of the fairly large landholding units also led to internal tensions and “intense rivalries for leadership” (Ng’ong’ola 1986:48). The leadership positions in issue were basically positions to be held by men. The men were from the project administration seen as the natural interlocutors of the land development programme, in the project context men were expected to perform the role of family representatives in relation to land rights, and eventually the “family” land tenure certificate would be given to a man. This practice was also in accordance with the provisions of the Registered Land Act of 1967. According to this Act, the family representative should have “the sole and exclusive rights of dealing with the land”<sup>31</sup>.

The land reform process as described here appears, somehow, fairly distant from the village and household livelihoods concerns of the women in the area, as described in Butler’s study and based on her fieldwork in the area of the land development programme. Generally she describes a situation where women were concerned with food provision. They were living close to their maternal kin and to a very limited extent depended on their husbands. Butler’s description from the 1980s indicated that the nuclear family (still) had a limited importance as a unit of production. At the same time she described a gender-based division in performing agricultural activities. Though men and women would generally carry out the same work in the fields, they would split into separate groups to perform these activities. The men, however, would often be absent both from the village and the household settings managed by the women.

The Lilongwe Land Development Programme (LLDP) at the village level seems to have operated primarily in a male sphere in dealing with the relationships between matrilineages and between matrilineages and the outside world (represented by men). It represents a public reform programme implemented by a gender biased and male-dominated government structure. When such programmes operate in a local context where matrilineal norms of practices, the effects may precisely be to marginalize women. This interpretation is supported by field-based information on current efforts to register and formalise matrilineal land tenure in other parts of the “matrilineal belt”, as reported for instance from Mozambique.<sup>32</sup> The state administration’s interaction with and focus on the “male

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<sup>31</sup> Rural Land Act 121(2), quoted by Ng’ong’ola (1986:50).

<sup>32</sup> Braga, C. (2001). "They're squeezing us!" Matrilineal kinship, power and agricultural policies: Case study of Issa Malanga, Niassa Province. In Waterhouse, R. & Vijfhuizen (eds.) *Strategic women, gainful men: Gender, land and*

sphere” in matrilineal groups may in practice contribute to shift the balance of interests and rights in land between men and women more towards the male side.<sup>33</sup> In the Lilongwe area, such a shift may have been reinforced by the greater possibilities of cash income offered to men through the tobacco production, where men were given the main role through the government's tobacco quota system.

The social dynamics around land rights at the time are difficult to document further for lack of qualitative data. However, the case is interesting since it provides an intake to analyse possible long-term outcomes of a land tenure reform and formalisation initiative over time. In the present study, we took the opportunity to make field visits to the LLDP area in March 2006, and collected some information on the present status of landholding, both with regard to land rentals and women's land rights.

### **8.3. THE SITUATION IN TWO LLDP VILLAGES TODAY**

The two villages visited by the research team are both located in Lilongwe district to the southwest of the Capital city. Local people belong to the Chewa ethno-linguistic group, practice a combination of subsistence and cash crop agriculture (primarily tobacco), and have traditionally been organised according to matrilineal principles of descent and inheritance. In the late 1960s they were included in the LLDP land tenure formalisation process. At present the two villages represent a certain local variation with regard to size, distance to main road and markets, and relative poverty. *Mpingira Village* has a fairly central location, but local pressure on land is still not extreme, and the people are relatively better off than in *Chibungo Village*, which is much larger, has a location more distant both from the city and the main road, but is still characterised by considerable pressure on land.<sup>34</sup>

#### **8.3.1. Land and gender in Mpingira Village**

*Mpingira* is located 16 km from Lilongwe city, close to the main road. According to the Village Headman, the village consists of 33 households, with a total of 17 ha of land, giving an average of approximately 1.3 acres (ca. 0.5 ha)<sup>35</sup> per household. The village was first established in 1959, when three families came to the area, and according to traditional custom asked the headman of Chimombo (now the closest neighbouring village) for land and permission to settle. Land was then granted to the newcomers. During the LLDP formalisation programme, however, a single land title covering both Chimombo and Mpingira villages was issued and given to Headman Chimombo. During the group interviews carried out separately with men and women in Mpingira in March 2006, the men mentioned the existence of this title, while the women made no reference to it.

Ten women participated in the group interview in Mpingira village. Four of these lived in uxori-local marriages – settling with their matrilineal kin and using land inherited through the matrilineage. Six of 10 lived in viri-local marriages, and had moved to the Mpingira Village to settle with their husbands. While the younger women said they were willing to go where the man preferred to settle, the elder women indicated that they had better protection against domestic violence in uxori-local marriages, since their “brothers could beat the husband” in such cases. For these women living with matrilineal kin and on the land of the matrilineage also meant that they had access to male

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*natural resources in different rural context in Mozambique*. Maputo, Nucleo de Estudos de Terra, UEM/Prensa Universitária.

<sup>33</sup> Peters writes, based on long-term fieldwork in southern Malawi, that the “outside” authorities in their dealings with village people “bring with the assumptions and reinforcement of male authority” (Peters 1997:190). She mentions that “agricultural services, including farmers' credit clubs, have been overwhelmingly directed to men; political party representatives are mostly men, as are those of business or similar organizations (such as the tobacco association)”.

<sup>34</sup> See also Annex II – I.

<sup>35</sup> 1 acre = approximately 0,4 ha.

“responsible relatives” as guardians, *nkhoswe*, who could defend them even in their relationship with their husbands.

On the one hand, the indication of a relatively high incidence of virilocal marriages could be explained by the predominance of male preferences in determining where a young couple would settle. But the availability of land in either the husbands or the wife’s family/village was also mentioned as a decisive factor in negotiating uxori-local vs. virilocal residence. A woman who goes to live in her husband’s village in virilocal residence may, however, continue to cultivate her family’s land in her natal village to “secure it for her children”. A woman’s rights to land through the matrilineage and her descendants’ potential claims to matrilineal land in these cases seem to require some reconfirmation in terms of presence, use or labour inputs in the case of virilocal marriages. Given the current pressure on land this may, however, only seem to be an option for some of the women living in virilocal marriages.<sup>36</sup>

Most women in the group interview said that their children should inherit the land the household was cultivating at present. In this interview situation, they indicated no clear preference for daughters’ inheritance, and sons were also considered eligible to inherit family land. The needs of each individual to access land as a livelihood basis, especially for family members lacking other resources such as a job in town, cash to buy or rent land etc. appeared as an important consideration. These replies may be interpreted as indications of a situation where elements of patrilineal principles (characteristic of northern Malawi) and matrilineal principles (characteristic of southern Malawi) are drawn upon in current processes of negotiating the allocation of land in the Lilongwe area (in central Malawi). Not to exclude sons as potential heirs to matrilineal family land may also be interpreted as an indication of an increasing importance of the nuclear family relative to the lineage. It can, however, also be seen as one example of how families and individuals make some flexible adaptation of matrilineal principles in allocating an increasingly scarce resource – land.<sup>37</sup>

The women in Mpingira village, in the group interview, also brought up an alternative view on the question of men’s interest to invest in land. Their perspective was less concerned with matrilineal principles and uxori-local marriages than with the practice of polygamy<sup>38</sup>. Of the 10 women, 4 had polygamous husbands (i.e. their husbands also had other wives). The “other wife” would normally live in a different village.<sup>39</sup> Often the first wife does not know about her husband contracting a new marriage until it is consummated, and there is little if any contact between a man’s wives. According to the women, husbands tended to take another wife after selling the tobacco harvest. While most of the work in tobacco production is done by both men and women, to climb the sheds to hang the tobacco for drying and taking it down again, are activities reserved for men. This exclusive male role in performing certain tasks seems to provide the (male) rationale for the men’s control of the income from the sale of the cash crop. According to the women, men need to control the money in order to contract new marriages without the wife’s knowledge and interference. Of 10 women, only 2 used to take part in discussions with their husbands on how to use the money generated through joint production activities. The women said that they themselves would prefer to invest more in increasing agricultural productivity, such as buying fertilizer, while their men would be more interested in getting more wives. Similar assertions were made in the group interview with women in Chibungo.

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<sup>36</sup> Examples indicating that women have to give up their matrilineal land claims in a situation of more competition over land, based on information from Chibungo Village, is described below.

<sup>37</sup> A somewhat different picture emerges in Chibungo Village, as described below.

<sup>38</sup> *Polygamy* means plural marriage, with one spouse having more than one mate at the same time. The overwhelmingly most common form of polygamy is *polygyny* – referring to one man being married to two or more women at the same time, which is also the form of polygamy practiced in Malawi.

<sup>39</sup> The same pattern of co-wives’ residence in matrilineal groups is reported among the Yao in southern Malawi. Cf. Compaore (2005:165).

### 8.3.2. Land and gender in Chibungo Village

*Chibungo Village* is located at approximately 50 km from the City of Lilongwe, at a distance of 15 km from the main road. The village is fairly old, and 240 households belonging to 14 matrilineages/extended families live in Chibungo. Approximately 100 ha of land belong to the village, which gives close to one acre per household on average. In the group interview, the women participating reported on household land holdings in the present generation between  $\frac{1}{2}$  and 1 acre (0.2 – 0.4 ha) or even less.<sup>40</sup>

The village land was registered under the Lilongwe West Land Development Program in the early 1980s. In the group interview with the men, they reported that during the demarcation and titling programme they had been involved in identifying the boundary of their village and any disputes with neighbouring villages were resolved there and then. At the time, the land title was given to the Village Headman, who would in turn allocate pieces of land to individual families/lineages. In the present generation land is inherited from parents who were allocated land at that time. Land can further be accessed through marriage, buying and renting. New families who want to establish themselves in the village either buy land or may rent land from fellow villagers. Thus at present all village land belongs to families, and no land remains for the Village Headman to allocate.

In the group interview, 4 of 10 women said they were born in the village and married in uxori-local *chikamwini* marriages. Six had married into the village, living in viri-local *chitengwa* marriages. The high proportion of viri-local residence was explained by the women as a result of the husband's influence: "He takes the woman to the village". The 6 women who had married into the village said that the household's land belonged to the husband.

Similar claims regarding polygamy was made by the women in Chibungo and Mpingira. Four of the 10 women in the group interview in Chibungo were also married to polygamous men. For them polygamy was primarily a disadvantage. It means that the husband has to share scarce resources between several households. Neither do the men consult with their (first) wife before they remarry: "You just discover that he is married somewhere else". Also in Chibungo women seem to link men's control of cash from sale of tobacco to polygamous practices. They claimed that husbands generally make decisions on how to use money and don't "sit down to discuss" with their wives. "The wife only sees that the tobacco I gone". According to the women, men tend to spend cash on beer – and on other women. Women's response (admitted by 7 of the 10 women interviewed) is to get access to cash through brewing beer for sale "to buy soap". They claimed that women's cash expenditure preferences were different from those of men. They would prioritise "household things" and "fertilizer and seed". Since the women spend most of their time at home and in the fields they see, more than men, the need for fertilizer to produce enough food for the household.

The 4 women who were born in the village reported to have inherited land from their mother or mother's family. Their individual stories do, however, appear as basically two forms of family strategies to deal with land scarcity: Either only one daughter among several siblings inherits land, or sisters inherit and work an inherited piece of land together.

One of the women had inherited 1 acre from her parents, while her two sisters and one brother did not receive any land. One woman inherited  $\frac{1}{2}$  acre, while her one sister and three brothers did not get any land and now live mainly from piecework. In these cases the parent generation treated sisters (and brothers) differently with regard to access to family land, but in this way also avoided splitting the land into even smaller plots. The same seems to be the case with the two women who both they

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<sup>40</sup> These numbers no doubt indicate a differentiation in the size of family land holdings in the village. It may also reflect that the women turning up for such a group interview may represent the poorer strata of the village population.

had inherited ½ acre together with their sister. Both were also cultivating the land together with the sister. One of them has one brother, one has two brothers, and neither of the male siblings had inherited any land.

A somewhat different picture emerges, however, when these women indicate whom they believe will inherit the family land they use and cultivate at present. One woman believes her maternal uncle will have the first priority to inherit her land, then comes her brother (not her two sisters). One believes her brothers (not her sister) will inherit her land, while one woman believes both her sisters and her brother can inherit the land she now uses together with her sisters. The fourth woman, who is at present sharing ½ acre with her two sisters, says that the land cannot be further subdivided and shared among the children in the next generation.

In fact none of the 10 women interviewed in Chibungo indicated that their daughters – or their children at all – as having rights, claims or possibilities to inherit land. The 6 women who had married into the village in *chitengwa* marriages, said that after leaving their natal villages, they believed they themselves had no claims any more to their maternal family land. The land of their matriliney had now been taken over by their sisters, or sisters and brothers. Furthermore they did not believe that their own daughters could claim land in their maternal villages, but neither did they believe their children were entitled to inherit land in their father's village. That land is seen by the women as belonging to the husband's (maternal) family.

Thus women have no control of the household land in case of *chitengwa* marriages, unless the land is bought. Given the high pressure on land, it appears that the women also lose their matrilineal land rights in their natal village when moving to the husband's village. Women married into Chibungo village thus appear to be extremely vulnerable to land tenure insecurity, especially in the case of husbands' death. What emerges from these interviews in Chibungo is, in a more long-term perspective, a situation in land-poor families where both women's and young people's rights and claims to land may lose out – in relation to senior males in the lineage.

#### **8.4. LAND AND GENDER IN THE SHIRE HIGHLANDS OF SOUTHERN MALAWI: A LITERATURE-BASED COMPARISON**

Since 1986 the Harvard-based anthropologist Pauline Peters has carried out research in the highland area southwest of the city of Zomba and southeast of the Shire River in Southern Malawi. She spent one year doing systematic fieldwork-based research in 6 different sites in 1986/87 and went back for a new year in 1990 and 1997. In 2006 she was carrying out a final year of follow-up research in the same villages together with Malawian researchers, thus establishing a unique source of in-depth qualitative data over a time span of 20 years. Pauline Peters has also addressed the issues of land and gender in a number of publications. The brief account presented here is principally based on published sources<sup>41</sup>, to serve as a reference of comparative data in relation to the information gathered in the main sites visited by this study team in 2006.

The area where Peters' research has been carried out was historically called the Shire Highlands, though this is not the official-administrative name for the region – at present forming the districts of Zomba and Chiradzulu. Shortly after the institution of the British Protectorate of Nyasaland the Shire Highlands actually was a key area for direct colonisation of native land by Europeans through the establishment of large estates:

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<sup>41</sup> Complemented by personal communication during the team's visit to Malawi in March 2006.

By 1910, nearly 1 million acres of land in the Shire Highlands had been obtained by Europeans at very low cost from Yao and Nyanja chiefs. One of the largest purchasers of land was Alexander Low Bruce, a son-in-law of David Livingstone, who acquired the largest single block of land in the country... (Peters 1997:193).

The former land of the Bruce Estate also includes the area of Peters' research. At present almost all the families in the area are descendants of matrilineal Lomwe-speaking groups moving into the area in the period between the 1920s and 1940s.<sup>42</sup> Their descendants who now live in the area tell that they moved into estate at that time in groups formed by brother(s) and sister(s) (Peters 1997:195). The estate owners, on their part, "consistently assumed a male-headed household for work obligations, land allocations and housing" (Peters 1997:194). Accordingly, land on the estates was allocated to men as "heads of households". However, Peters asserts that in "all the cases known to me, the land that was allocated to men has all reverted to the norm of matrilineal inheritance and to the pattern of daughters inheriting land" (Peters 2002:165).

Thus today the people in the area organise according to matrilineal principles, including matrilineal descent and inheritance and uxorilocal marriage. Villages are formed by "clusters of compounds made up of the houses of mainly matrilineal relatives" (Peters 1997:190). In the domains of life governed by kinship, "women exercise authority comparable to men's" (op.cit.). In the cases where women are holding positions of Village Head they are, however, commonly seen as "holding the place" for a male matrilineal relative, while land is basically in the hands of women. Practicing uxorilocal marriages, men marry into a village and use the land of their wives families:

Land is passed matrilineally but ... almost all passes to daughters and not to sons. Villagers describe this as being because sons 'leave' ... and are expected to use land belonging to their wives. Young men still living at home or who return for periods between divorce and remarriage (which is common) may be given a field to use by their mothers or sisters. However, it is very rare for a married man to have full rights to a field belonging to his matrilineage, with the solitary exception of the headman of chief who usually lives in the village of his matrilineage (Peters 2002:165).

The local reality described by Peters thus very much corresponds to a "traditional" matrilineal pattern of organisation, and represents a case where matriliney "has proven remarkably resilient in the face of direct and indirect challenges" (Peters 1997:189). The pattern she describes, on the one hand appears to contrast in significant ways with the situation reported (above) in the two Chewa villages visited in area of the former Lilongwe Land Development Programme. On the other hand, one may ask, what are the local effects of increasing pressure on land in these villages in the Shire Highlands?

This question is addressed by Peters in a couple of her most recent articles (Peters 2002; Peters 2006:77). What she describes here are situations of increasing conflict over land leading to the division of matrilineal families. During her research she found, unexpectedly, that "a very high proportion of intra-kin arguments and disputes, whatever their particular focus, turn ultimately on chronic disagreements and conflict over land" (Peters 2002:157). The result is that matrilineal groups split up, not only between sisters' daughters, but between sisters, as a result of conflict, quarrels, and even witchcraft accusations. "A final rupture of matrilineal segments takes place when a sub-group moves to a different area, thereby ceding the family land to those who remain" (2002:158).

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<sup>42</sup> The Lomwe were mostly immigrants or descendants of immigrants from Portuguese East Africa, present-day Mozambique.

Formerly, such “segments” could move to a new area, and ask for land to settle there and establish new villages.<sup>43</sup> With the current pressure on land in Malawi and the virtual non-existence of “unused land”, this is not really an option any more. The result is, according to Peters, increasing struggles to maintain or claim family land, leading to conflicts between close matrilineal kin. The more long-term effect will, she holds, will be increasing social differentiation and the creation of a class of rural poor without the basic security and capital that property in land represent as long as “land continues to be the source of livelihood for most Malawians” (Peters 2002:159).

## **8.5. LAND AND GENDER IN TWO RESETTLEMENT VILLAGES – UNDER CURRENT LAND REFORM INITIATIVES IN SOUTHERN MALAWI**

How can women’s land rights in matrilineal groups in Malawi at present be affected by state-led and donor-supported land reform initiatives – in a situation of land scarcity, increasing pressure and intra-family competition to access land? This question will be explored here with particular reference to the situation as reported by the people in two recent resettlements established in the southern district of Machinga in 2005-2006, under the World Bank-funded Rural Community Land Development Programme. The research team was able to make group interviews with the resettled groups in March 2006, and carried out separate interviews with men and women at the resettlement sites.

### **8.5.1. The Kalungu resettlement in Machinga**

The people presently living in Kalungo all come from Chimbalanga Village (TA Bvumbwe) in Thyolo District and belong to the Lomwe ethno-linguistic group. This group of resettled people formally consists of 35 households and now occupy a 79 ha estate, with 2 ha land plots allocated to each household. They arrived in the district of Machinga in November 2005 – too late to start planting following the annual cycle of rainfall, and thus too late to harvest in the coming season.

According to the women, the decision to move originally “came from the women”, but depended on a joint decision in each household. Since the group was relocated from Thyolo to Machinga after the growing season has started, it was difficult for the group to start farming upon arrival. But they had already planted crops on the land in their area of origin, and made arrangements to take care of this production. There has also been some travelling back and forth of individual household members between Machinga and Thyolo. A number of households at the time of the group interviews had one or more members staying in Thyolo to look after their gardens.

As reported during the interviews, the people who have resettled mainly decided to move due to land pressure. In Chimbalanga Village in Thyolo, matrilineal rules give women rights of ownership to land, and residence is commonly uxorilocal. In the case of death or divorce of the wife, the man goes back to his parental home and the land remains in the wife’s lineage. While female children can inherit land, male children in principle have only user rights. The general picture for the resettled households from Chimbalanga was that each of the families/households had less than ½ acre of land inherited from the parents’ generation. The small plots and increasing pressure on land meant that the children of the settlers in practice would have no land to inherit in Chimbalanga. The resettlement project thus appeared to offer more livelihood opportunities for the future.

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<sup>43</sup> Cf. the case of Mpingira Village, established in 1959, and reported above.

The family land in Chimbalanga, Thyolo, was at the group's departure "given to" – or perhaps rather retained by – matrilineal kin. All were women. The 12 men in the group interview carried out in Kalungu said they had left the household's land either with their mother-in-law or with the sister-in-law – that is, with the wife's mother or sister. Of the 12 women in the group interview, 10 said they had left their land with maternal kin – mother, sister or daughter. Two said they had left it with sisters-in-law, probably indicating virilocal marriages. In both cases the husband had remained in Thyolo, and one of them lived in a polygamous marriage.<sup>44</sup>

For the women in the Kalungu resettlement, the project no doubt represented an opportunity to split up a matrilineal group living on a plot of land that was too small to support the next generation. And possibly it represented an opportunity to split before internal conflicts due to increasing pressure on land moved beyond a point where relationships with matrilineal kin were disrupted, as indicated by the – at least initial – movement back and forth between Machinga and Thyolo. Their form of adaptation to the fairly difficult situation when they first arrived in Machinga – lacking shelter and water, with little possibilities to start planting before the next season – can also be seen as an example of the flexible practices of matrilineal groups in situations of high vulnerability or productive resources and uncertain agricultural yields (cf. Douglas 1969). However, this form of flexible adaptations was not necessarily highly appreciated by the resettlement project staff – perhaps because of lacking understanding of matrilineal groups at the higher levels of project management.

The resettled people's persistence in staying on in Kalungu, in spite of considerable hardships in the beginning, can no doubt be interpreted as an example of the continued importance of land as a basis for livelihoods in rural Malawi. When asked if they would be willing to sell the land after acquiring individual title deed to the 2 ha allocated to each household, a reply which seemed to express the general feeling among the women was: "Sell the land? No. My daughter would starve!"

### **8.5.2. The Mijale settlement in Machinga**

Mijale is, like Kalungu, formed by a group of 35 resettled households under the World Bank-funded *Rural Community Land Development Programme*. The group is currently registered as a trust, to be formally converted to a village relatively soon. Mijale is one of three new settlements in the area established with people who have relocated from within the Machinga District. The majority of people in Mijale originally lived in two villages: Msulupi and Chimwaza. They are predominantly of the Yao ethno-linguistic group.

The Yao, comprising approximately 8% of the Malawi population, are primarily living in the southeastern parts of the country. The present study did not include field visits to more traditional Yao villages. However, earlier research carried out by MSc students at UMB in Lungwena, in the district of Mangochi, indicates that matrilineal principles to a great extent guide inheritance and transfer of land between generations in that area. In the case of divorce it is also the wife who stays with the land. In Lungwena, village land can in principle still be allocated to "strangers" – including in-marrying men – by the village headman/woman, indicating less pressure on land on the eastern side of Lake Malawi (bordering Mozambique) than in other parts of southern Malawi. Men in Lungwena are, however, more concerned with "looking for money" and thus involved in market transactions than with agriculture. Through catching and selling fish from Lake Malawi they get access to cash, or enter the labour market through migration (Compaore 2005:61-62). Locally, it is men who "operate in the cash sphere" and "can handle money", while the women are seen as responsible for producing food crops for household consumption (Groven 2005). Some men,

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<sup>44</sup> In this group of women, only 1 out of 12 was married to a polygamous husband.

however, work part time in the household farm “to help their wives” (Compaore 2005:77). So far studies specifically focussing on land issues have not been carried out in Lungwena, but other case studies seem indicate that land is not yet locally perceived as the major scarce resource.

The resettled Mijale group in Machinga District, on their part, indicated that they had faced high levels of land scarcity in the close-by villages they came from. The land in Chimwaza and Msulupi was in principle inherited from the parent generation following matrilineal rules. After marriage a couple would normally settle uxorilocally – in a *chicamwini* marriage in the wife’s village. However, in the villages the land had over time been very much fragmented. To the extent that the present generation was allocated land, their plots were too small to sustain their food requirements, and they were dependent on renting land to sustain their livelihoods. An important reason for the land scarcity in these villages was that three decades ago land was taken from the local villages and converted into estates.

The Banda regime had promoted the establishment of tobacco estates to secure export earnings from agriculture, and “customary land” was alienated from local people and allocated to public civil servants and party loyalists. In Machinga, most of them were not resident in the area. With the shifts in policies imposed by the Bretton Woods institutions after an economic crisis in 1979/80, together with changing macroeconomic conditions, the estates were closed. This closure was in Machinga also seen as a result of lack of resources and skills on the owners’ side. However, the estate owners still owned the land, and started to rent out land to permanent tenants and to the people close to the estates. Two of these estates have actually been bought and resettled under the World Bank-funded programme.

During the group interviews in Mijale, the men indicated that the land allocated through the resettlement programme actually belonged to the man in the household, and that the land certificate should be issued in the man’s name. They feel that having the man’s name on the certificate will increase land security for the man, indicating that men are land insecure in the traditional matrilineal system. They are, however, willing to include all children on the certificate to ensure their future livelihoods. In spite of this, the men did not think that traditional matrilineal rules and uxorilocal marriages as such prevented men from investing in land. In most cases they would invest for their children.

According to the women, the issue of land certification was an issue that would come later. They apparently took it for granted that land titles would either be held jointly by both husband and wife, or else held by the wife alone. They seemed unaware of the men’s conceptions and plans to have land titles issued in the men’s name. The first elected leader of group in Mijale was a woman. She did not, however, expect to be re-elected at the next elections. Very likely the next leader will be a man, who can secure men’s interests with regard to land certificates.

There also seemed to be a preference among the women for inheritance not only for daughters, but for all children. But when talking about land inheritance, they said they expected the headwoman to witness the handover of land “from a woman to her children”, thus explicitly referring to the matrilineal principles that their men – in a separate group interview – were seriously questioning.

## **8.6. FURTHER ELEMENTS IN A DEBATE ON WOMEN’S LAND RIGHTS IN MALAWI**

Malawi is at present in the process of establishing the cornerstones of a new land reform process – including the formalisation of customary land rights and individual family land titles. How will this

reform affect women's land rights when new policies and laws encounter the local norms and principles of both matrilineal and patrilineal groups in different parts of Malawi? In the process of implementing the new law, what will be the women's possibilities to claim land rights in family negotiations and in meeting with the institutions processing formal rights and claims to ownership? In whose name will future land titles be held? Actually the consequences for women's land rights and their possibilities to claim such rights when the new policies are implemented have, so far, not been very prominent issues of debate in the Malawian context.

A goal of the new Land Policy is to ensure tenure security and equitable access to land. How can this be achieved for both women and men – in a situation of increasing scarcity, pressure and competition for land? This is a real dilemma facing Malawi today.

A study carried out by Naomi Ngwira (Ngwira 2003), based on a survey in a sample of villages and townships in both North, Central and Southern Malawi, present several interesting findings and elements for such a debate. Her analysis in several ways complements the presentation given in this chapter. It also includes samples of respondents in four predominantly patrilineal districts in the north of Malawi, in addition to samples from five districts in the Centre and South. A number of features distinguish patrilineal principles and norms from those characteristic of matrilineal groups<sup>45</sup>. Ngwira's study indicates a clear pattern of predominantly *virilocal* marriages in the North, a mix of *virilocal* and *uxorilocal* marriages in the Centre, and a predominance of *uxorilocal* marriages in Southern Malawi (2003:6). In her sample, as much as 96% of the rural respondents in Chiradzulu/Thyolo lived in (uxorilocal) *chicamwini* marriages.

Ngwira asserts that women in both patrilineal and matrilineal groups have few independent rights to property "due to the mixture of traditional customs and market economics still in the process of accommodation" (Ngwira 2003:7). There is, according to Ngwira, one exception in this picture of customary norms and practices. "*The exception is custodial ownership of land in matrilineal uxorilocal (chicamwini) marriages*" (op.cit., italics in original).

Ngwira's survey questionnaire asked specifically for perceptions of ownership of land rights, distinguishing between user rights, ownership, and in whose name the land was held. "Almost all respondents said they had user rights to land available to their family or household... [and] more respondents felt they had ownership rights than those who felt the family land was held in their names" (2003:8). Even in *chicamwini* marriages, "79% or currently married male respondents perceived themselves as owning land" (op.cit.). This was, in fact, an unexpected finding. Ngwira suggests it may be evidence of perceptions of user rights as the same as ownership rights. It may also be an indication that the common Western conception of "ownership to land" does not correspond to local people's conceptions of the term in Malawi.

What Ngwira's study suggests, however, is a situation where men and women have perceptions of ownership and could present claims to user rights and ownership rights that are to a large degree overlapping. Her findings clearly show that local people's perceptions of rights to land conflict with a conception of ownership as "exclusive rights".

There is also a gendered bias in the responses. If respondents from matrilineal and patrilineal groups are put together, we see that a larger proportion of men report on ownership of land than women.

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<sup>45</sup> Ngwira describes the (traditional) patrilineal system in northern Malawi in the following way: "The marriage residence is virilocal, that is, the man's village is the matrimonial home and the man pays *lobola* or bride price to the wife's parents to establish his right to take his wife and children to his own village... Women do not own property in their own right" (Ngwira 2003:7). "The payment of *lobola* seals the dispossession of women in patrilineal customs" (2003:8)

Among married respondents in matrilineal groups, 79% of the men and 89% of the women in *chicamwini* marriages reported that they owned the land they were using. In *chitengwa* marriages 93% of the men and 89% of the women said that they owned land (Ngwira 2003:9)

With regard to “in whose name” the land is held we also find the pattern of overlapping claims in Ngwira’s study<sup>46</sup>. But even in matrilineal groups, men to a larger extent than women claim that the land is held “in their name”. In *chitengwa* marriages 92% of the men and 28% of the women said the land was held in their name. In *chicamwini* marriages, 81% of the women and as much as 52% of the men and perceived the land as held in their name.

In a discussion of the implications of these findings with regard to the formalisation and titling of (exclusive) rights in land, a further element should be taken into account; that is, men’s and women’s access to cash and purchasing power. In Ngwira’s study the respondents tended to say that when their spouse died, they would inherit property “because they bought it” (2003:10). This could indicate that purchased land is not considered as “lineage land”, and can be inherited by the spouse without contradicting local customs. However, if we put together local perceptions of ownership rights, overlapping claims to land, and the general marked differences in men’s and women’s access to cash – and thus women’s purchasing power – a new picture emerges. Men will generally have more possibilities to acquire land through purchases. They will also be more likely to have access to cash to pay for formalisation processes. This will, no doubt, have implications for the formalisation of individual ownership rights to land. According to Ngwira, it implies that “the differential ability of men and women to purchase land or pay for processing its ownership or titling may have consequences over who will own it, favouring men” (Ngwira 2003:10).

The empirical data collected by the current report project team supports earlier studies indicating that women’s land rights are becoming more precarious; also among the groups in southern and central Malawi where matrilineal rules and practices have been the norm for generations (cf. Ferguson & Mulwafu 2005). In fact, how to secure women’s land rights is a challenge, not only in African countries with a predominantly patrilineal tradition, but also in Malawi where matrilineal rules and practices traditionally have been dominant in a large part of the country.

We know that the current situation with regard to both land rights and access to land in Malawi is characterised by high pressure and increasing competition for land, while on-going land reform and formalisation initiatives seek to address structural problems in the land sector – both in a short-term and a long-term perspective. However, what the present study indicates is that the rights of women may become increasingly marginalised, not only in the informal family and lineage negotiations over rights and access to land – an increasingly scarce resource – but also in the bargaining processes related to the implementation of land reform policies and programmes. In order to counteract these tendencies, special mechanisms that protect women against direct discrimination and more indirect processes of marginalisation should be established in Malawi (cf. Kaarhus *et al.* 2005).

In the Malawian context, this study has shown that historically there has been considerable focus on men’s role and function in matrilineal groups. Modernisation of land tenure, agricultural development and efficient production in Malawi has, to a great extent, been associated with a change in men’s role and a strengthening of men’s position and men’s land rights. The present study indicates that, over time, both the science-based and political-administrative representations of matrilineal rules and practices in Malawi have been systematically flawed – in assuming patrilineal

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<sup>46</sup> Actually only a fraction of landholders in Malawi have title deeds. The responses to this question in Ngwira’s study can, however, also be interpreted as giving indications about who are likely to claim title deeds in a situation when the formalisation of land rights proposed in the current land reform is to be implemented.

norms and rules as the “standard”. These representations have, no doubt, also influenced current land reform initiatives and processes. The present study indicates that an improved research-based understanding of the internal logics and contextual dynamics of matrilineal rules and practices is actually required, in order to provide a better basis for the implementation of the new land policy and future land reform programmes in Malawi.

## **9. CONCLUSIONS**

After independence in Malawi in 1964, doubts about the economic development potential of the smallholder agricultural sector grew within Central Government, and a policy was formed that favoured the expansion of the estate sector. Estates, individuals and corporations were provided opportunity to lease land at very low prices. Customary land was made available based on the perception that such land was abundant and that smallholder agriculture would be unaffected. No land tax was introduced and land rents were set at a very low level.

This land policy was an important basis for the expansion of the estate sector in the 1970s and 1980s, in addition to access to subsidised credit. It did not contribute to poverty reduction in the same period. Discriminatory policies against the smallholder sector, like high implicit taxation of smallholder cash crop production and restrictions against smallholders producing burley tobacco, prevented that smallholders benefit from the favourable conditions for tobacco production on the estates at that time. Increasing land pressures and contraction in international labour migration also contributed to lowering the rural wages, in favour of the estate sector. Many of the policies that favoured the estate sector were removed in the early 1990s, but there are few good studies of the impacts of these reforms on the estate sector, including impacts on tobacco tenants. The Special Law Commission (2003 - 2006) recognises the need for a new law to deal with land tenancy issues. It is urgent that this work starts but it requires good empirical knowledge that is still missing.

The New Land Policy aims to promote decentralised and transparent land administration. As a follow-up the Special Law Commission has proposed a new Customary Land Management Act. The plan is to establish Customary Land Committees and Customary Land Tribunals to handle customary land disputes.

The planned land reform implies a closer integration of the traditional system and statutory law and government. Traditional authorities are now to be given central positions in the new local land administrations and the local land tribunals, as leaders of the democratically elected committees. This means that they can play an important role in the local government administration in relation to land administration. However, considerable resources will be required to establish and train these local administrations and to implement the land reform according to its intentions. It seems evident that donor support will be required to implement the reform in a pro-poor way.

In the work with the new Land Policy, insufficient considerations appear to have been given to the transaction costs that are involved in the formalisation of land rights and in making formal land markets work. Piece-meal approaches to land formalisation are very costly and affordable only by the wealthy who may take advantage of this at the expense of the poor. Lessons should also be drawn from other countries, like Ethiopia, in relation to low-cost broad based land registration and certification. This may be essential in order to make the reforms more pro-poor. A pilot project approach is preferable to allow learning by doing.

It is not realistic to believe that land registration and land titling quickly leads to better access to credit for poor rural households. While this approach may have potential in urban and peri-urban settings, there may be a long way to go in rural settings. The evidence from Malawi indicates that credit access is restricted also for smaller estates and many of them have gone out of business, casting doubts about the superiority of large farm sizes after the removal of policies that favoured large farms. Studies in many other countries have revealed an inverse relationship between farm size and land productivity due to imperfections in non-land factors of production, especially that of labour, making hired labour an imperfect substitute to family labour.

There appears to be insufficient comprehension and little consideration of the potential role of land markets in Malawi. Not much attention is given to the potential role of land rental markets and how they may have a stronger and more important role than land sales markets. This is illustrated by the fact that no careful empirical studies have been carried out to study the emerging land markets and how tenancy is related to poverty and food insecurity in the country. The new land reform therefore appears to be based more on ideology and belief than on careful empirical research.

Informal land rental markets may be more efficient in reallocating land to more efficient producers and should be stimulated rather than attempted formalised. There is a risk that the local land administrations will contribute to increase rather than decrease transaction costs in the land markets if even short-term rental contracts have to be registered.

Land rental markets tend to favour the poor who can get access to land at a low cost, while land sales markets tend to favour the wealthy who may be able to buy land from the poor through distress sales at low prices. Shocks like droughts and adult deaths due to HIV/AIDS may be so severe that traditional safety nets give insufficient protection to the poor, and they may therefore be forced to sell their land as the last option and become landless destitutes.

The safety net functions of customary land tenure are at present under considerable stress, and risk being further weakened with the implementation of current land reform policies unless special measures are taken to make the reforms more pro-poor. With increasing competition for land, especially in the central and southern regions of Malawi, what resources different individuals are able to bring into, or draw upon, in contestations over land rights are likely to play an increasing role for outcomes.

At present Malawi has little to offer a growing class of landless people, and within the land reform implementation process it will be necessary to design measures to prevent a significant number of people to end up in a "poverty trap".

One attempt to provide land to the poor is the Community-Based Rural Land Development Project (CBRLDP), where land-poor people are to be resettled on land acquired from estates that are willing to sell the land and where land is poorly utilised. This project is still at an early stage and the study team visited a couple of the early resettlement areas. We observed several problems here in relation to providing basic services like safe drinking water and access to other services and integration with the local communities. The Malawi Social Action Fund (MASAF) is supposed to provide these services. It is obvious that it takes time for both central and district administrations to develop the competence to organise these projects well. There are very many things that can go wrong in these types of resettlement projects, and the costs of resettlement are quite high. In order to solve some of the problems with basic infrastructure and social amenities these should probably be addressed before the beneficiaries are resettled or they could first be employed in relation to such investments, e.g. through food-for-work or fertiliser-for-work arrangements. If such amenities and employment also benefit the surrounding communities they are likely to be more positive and welcome the projects.

The empirical data collected by the current report project team supports earlier studies indicating that women's land rights are becoming more precarious, even among the groups in southern and central Malawi where matrilineal rules and practices have been the norm for generations. In fact, how to secure women's land rights is a challenge, not only in African countries with a predominantly patrilineal tradition, but also in Malawi where matrilineal rules and practices have been dominant in

a large part of the country. The current situation with regard to both land rights and access to land in Malawi is characterised by high pressure and increasing competition for land, while on-going land reform and formalisation initiatives seek to address structural problems in the land sector – both in a short-term and a long-term perspective.

One very likely result of the current land policy and the proposed legislative framework, if implemented, is an increasing splitting up of currently very small landholdings. A real dilemma in this regard is the fact that alternative livelihood options are not readily available, but still have to be created.

Our study indicates that the rights of women may become marginalised, not only in the informal family and lineage negotiations over rights and access to land as an increasingly scarce resource, but also in the bargaining processes related to the implementation of land reform policies and programmes. In order to counteract these tendencies, special mechanisms that protect women against direct discrimination and more indirect processes of marginalisation should be established.

The day-to-day challenge for a majority of Malawians is to access enough land to obtain decent livelihoods and a reasonable food security during the whole year. Women play a key role both in relation to land access and food security. But still women's roles and gender relations are seldom in the focus, either in research, policymaking or public debate in Malawi.

In the Malawian context, we have shown that over time there has been considerable focus on men's situation in matrilineal groups. Modernisation of land tenure, agricultural development and efficient production in Malawi has, to a great extent, been associated with a strengthening of men's land rights. The present study indicates that over time both the science-based and political-administrative representations of matrilineal systems in Malawi have been systematically flawed. These representations also influence current land reform processes. A better research-based understanding is also required with regard to the dynamics of matrilineal rules and practices under current economic conditions and changing policies.

## **ANNEX 1**

### **Terms of reference for a study under the Frame Agreement NORAD – UMB**

Changing land rights in Malawi: A study focusing on formalisation initiatives, emerging land markets and gender issues

Land is a vital resource for rural livelihoods in Malawi. Changing policies of land tenure have tried to address some of the problems related to land rights and land use, at present reflecting global trends towards formalisation, which also involves increased influence of neo-liberal models. A land reform process including procedures for formalisation of land rights is at present underway in Malawi, after a new Land Policy was approved in 1999. The new policies and reform initiatives aim to promote more productive uses of land through instituting and clarifying rights to land through formalisation. Closely connected initiatives aim to decentralise government functions to lower – primarily District – levels (cf. separate Concept note).

A: This study will give an overview of the present situation concerning land rights in Malawi, and provide an updated discussion on land policies and formalisation initiatives, current debates and different stakeholders' positions with regard to ongoing changes and current policies. Two key issues will furthermore be given particular attention:

B: Women's land rights.

C: Changes in tenure arrangements – towards emerging land markets.

B: The section on women's land rights will address the implications of recent formalisation initiatives for women, including access to and control of both agricultural land and other natural resources. Even if laws and policies aiming to provide formal or 'secure' tenure through titling and registration are usually gender neutral, both customary land rights systems and actual land use and productive activities are in practice highly gendered. Malawi has historically been characterised by customary systems of land tenure based on both matrilineal and patrilineal principles, which have co-existed and interacted over time. In this part of the study, the UMB team will follow up a comparative study of "Human rights, formalisation and women's land rights in Southern and Eastern Africa", which in 2004 was carried out by Noragric researchers in collaboration with researchers from the Institute of Women's Law at the University of Oslo, focussing on Tanzania, Mozambique, Zimbabwe and the Republic of South Africa.

C: The section on changes in tenure arrangements, will address the tendencies towards increasing transactions in land and de facto emerging land markets, including processes involved at the policy level and administrative level, and to some extent on the ground. Increasing pressure on land characterizes the situation for most rural smallholders in Malawi. Increasing pressure on land also means that customary systems and practices are under stress. The possibility of moving out of densely populated communities and getting access to uncultivated land elsewhere is at present virtually non-existent for young farmers. At the same time, the great majority of the population still relies on agriculture as the basic element in their livelihood strategies.

Analyses from other countries show that high pressure on land usually results in a high number of transactions in land. The Malawian case appears to contradict this general tendency. Several factors may lie behind this situation, the policies of the former Banda regime being one of them. However,

the Government of Malawi is currently in the process of implementing new land policies that aim to facilitate land transactions.

What is the role of the Traditional Authorities, who traditionally have had the power to allocate land, in the present situation? According to a recent World Bank policy research report, *Land Policies for Growth and Poverty Reduction* (2003), the relationships between land rights, tenure arrangements and land markets require increased attention. This study aims to provide a “situation report” in 2005, focussing on two Districts (one in the South and one in the North), linking a few selected cases of land transactions (where these can be identified) to political processes at the local level, and to policy processes related to land reform and formalisation programmes at the central level. The study will also consider the scope for increasing land market activity and distributional effects of such activity.

Finally, the study will link the discussion of formalisation initiatives, policy processes, and land transactions, to debates on the relationship between statutory law and customary rights, especially with regard to the situation for women’s rights to access and use land.

## ANNEX II

### VILLAGE INTERVIEWS REPORTS I

Name of village:	<b>Mpingira</b>
District:	Lilongwe, Central Region
Traditional Authority:	Chimombo
Land tenure regime:	Matrilineal
Data collection:	Separate focus group interviews with village men and women, carried out 18.03.06

#### **Village characteristics**

This village is located in the peripheral zone of the capital, 16 km from Lilongwe city along the Road to Mchinji (a Malawi/Zambia border town). The village was established in 1959, after 3 families moved away from their original Mvuvu Village and asked Chief Chimombo for a piece of land.

Currently there are, according to the Village Headman, 33 households in the village. The village has approximately 17 ha of land. This land falls under the Lilongwe Land Development Programme, under which customary land was registered. The village land falls under the title given to Chief Chimombo. Chimombo Village, where the chief lives, is located very close to Mpingira, and has recently sold 70 ha of village land, remaining only with residential land. The land was sold by the individual households to a large company, but not out of distress.

#### **Access to land, inheritance, marriage and residence patterns**

Villagers access land through inheritance, marriage, buying and renting. The households in the village have acquired their land mainly through inheritance from parents. However more land for production is acquired through land rental and sales markets to supplement the inherited land. This is done both within and outside the village. Inheritance in the area is predominantly structured through *matrilineal* rules. In principle this means that land is passed on between women in the same lineage and to the next generation. In practice, these rules are applied in fairly flexible ways, and various factors are taken into account.

When a man and a woman decide to marry, the decision on where to settle depend to a large extent on availability of land. Whether they settle in the wife's village, *uxorilocally* in what is called *chikamwini* marriages, or in the husband's village, *virilocally* in what is called *chitengwa* marriages, will, according to elder women, be a decision based on where there is enough land to cultivate<sup>47</sup>. Young women may, on their part, say that they wish to go where the man prefers to settle "because of love". However, women may find that they are better protected against domestic (husband's) violence if the couple settles uxorilocally. Proximity to the woman's family means that her brothers may "beat the husband" in cases of excessive domestic violence. Therefore a woman may chose to move back to her natal village in the early phases of marriage, and may in such cases actually be followed by her husband in this resettlement. Of 10 women interviewed, 4 had uxorilocal residence and 6 had virilocal residence.

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<sup>47</sup> For *uxorilocal residence* – the expression used by the village women was: "the man benefited". For *virilocal residence* – the expression was: "the woman benefited" (i.e. accessing land).

A woman, who joins her husband in virilocal residence, may continue to cultivate her family's land in her natal village "to secure it for her children". A woman's rights and her descendant's potential claims to her matriliney's land seem to require some continuous reconfirmation in terms of e.g. labour inputs over time given the current pressure on land.

Most women in the focus group thought that their children should inherit the land the household is at present cultivating. There was no clear preference for daughters' inheritance. Sons were also considered eligible to inherit family land. The needs of each individual to access land as a livelihood basis, especially for family members lacking other resources such as a job in town, cash to buy or rent land, seemed to be an important consideration in a situation of relative land scarcity. Competing claims for land were by these women, identified with their sisters in laws' claims to the same land as they themselves and their children. The women did not refer to their brothers, mothers' brothers, or the Village chief as having any role in connection with access to and inheritance of land.

Out of 10 women, 4 had polygamous husbands (i.e. the husband had more than one wife). These wives are living in different villages. According to the women, husbands tended to take another wife after selling the tobacco harvest.

### **Wealth indicators**

The households in the village are relatively better off than e.g. those in the other village visited by the team in the same area, Chibungo Village. Some households own cattle and/or goats, and almost each household had a shed of tobacco, the main cash earning crop. This can be seen as an indication that households have cash inflow enabling them to meet diverse household requirements. One household managed to buy a minibus from the sales of tobacco in 2005. Cash incomes generated by the household in tobacco production is, however, to a great extent controlled by the men, and can thus also be used to finance polygamous marriages, which are usually arranged without the first wife's knowledge.

### **Division of labour and household decision making**

According to the men: Only men can construct tobacco sheds while only women usually carry out housework. Men decide on land renting and crop choice. Men discuss with the women about investments and allocate resources based on budget and priorities. The money is kept in men's account, and women get money from the men.

According to the women: Men need to control the money in order to contract new marriages without the wife's knowledge – and interference. Most of types of work in tobacco production and curing is carried out by both men as well as women. Climbing to hang the tobacco for drying in the tobacco shed, and taking it down, is the only activity reserved for men. But it provides a rationale for the men's greater control of the cash income. Of 10 women, 2 used to take part in discussions with their husbands on how to use the money generated through joint production activities. But women also seek to generate some income of their own, through for instance baking doughnuts and scones, for sale in the village or at the local market.

### **Land markets**

Informal land sales and rentals are common in the area. The development of informal land markets has enabled acquisition of land by people who would not otherwise have access to village land, or had limited land and acquired additional land. These would otherwise be barred by customary rules of eligibility.

### **Land rentals**

Many of the households in the village rent in land. Young people down to 17 years of age may rent in land, girls as well as boys. Girls may grow groundnuts while boys may grow tobacco, maize and groundnuts. Land is rented within the village and from outside the village. The common system used is fixed rent. Most times land is rented out in order for the household to get cash for emergencies like food in times of hunger, medication, and funeral. Poor landlords go out to search for tenants who can pay rent in form of cash. Amount of rent is agreed upon tenants' inspection of the said land. The common rent rate is MK 1500 per plot, estimated at 1 acre (70 by 70 m) in most cases. No written contracts are signed between the landlord and the tenants; they only use verbal contracts without witnesses. Most contracts are for one year, unless landlord wants tenant to renew the contract, then new negotiations are needed. Witnesses are used only when the land is rented for more than one year or if the land is rented to an outsider.

In the process of land rentals chiefs do not take part if tenant and landlord are from the same village. However, if the tenant comes from outside the village, he/she will have to inform the chief of the village where he/she is renting in land about the contract. This is also a verbal arrangement, but when visiting the chief the tenant honours the chief with some money to ensure that the chief will assist in case of disputes over the land or in case of theft. This is informal and the amount given to the chief varies depending on the tenant's ability. Most people from the city will give the chief not less than MK 5000, while people in the village or from rural areas may give much less money to the chief.

### **Characteristics of landlords**

Landlords are in most cases poor farmers using the land as a source of cash. In some cases landlords can rent out their whole plot and they sell out labour. This is in most cases due to the low productivity of the plots as they do not have cash or resources to buy fertilizer and improved seeds. Hence selling casual labour becomes more productive than working on their plots. Labour is sourced from within the villages or outside the village. When land has been rented the landlord can negotiate with the tenant to employ him/her as a labourer on the plot.

In some instances, households rent out land at a higher price and rent in land at a lower price in villages further away from Lilongwe. Prices in the villages further away from the city and road are MK 700-1000 per acre and hence a MK 500/acre profit is gained by the household that rents out land to only rent in further away.

### **Characteristics of tenants**

Tenants in the area tend to be relatively well-off farmers within the village who have little or no land. Tenants may have very good sources of income apart from agriculture, or if in agriculture there are the well-off farmers with livestock like goats and cattle. They are able to hire in labour and pay in cash or kind depending on the demands from the labourers.

Business people and employees of government, NGOs and companies from Lilongwe city come to rent in land from other villages in the area. Most land rented in by people from the city is used to grow maize, while the rural people mostly rent in to grow tobacco.

### **Land rental prices**

Land rentals are pegged based on the general rate in the area, but also depend on negotiations between tenant and Landlord. Currently land is rented at an average of MK1500 per acre<sup>48</sup> in the areas close to the city and the main road while as one goes deeper into the rural areas the prices reduce to MK1000/ acre. There is no clear basis for the prices in rental, however there has been a steady increase in the prices since 2000. The price of land rentals per acre has steadily increased in nominal price from MK400 in 2000 to the current price of MK1500.

Price increase is due to:

- a) Inflation
- b) Increase in demand for renting in land as a result of increase in household numbers and reduction in household farm sizes
- c) Rich tenants from town are willing to pay more to access land.

The increase in land rental prices has not been steady. Natural shocks have been attributed to reduction in prices e.g. during the drought of 2004, prices of renting in land were reduced to MK600-800 per acre. This is also the time where a lot of land sales were done and more land was available for renting. This indicates that land sales and rental were used as insurance and/or coping mechanisms.

### **Land sales**

In Mpingira they feel secure about land tenure and they have not sold any land. This information was confirmed by both men and women. They perceive that they benefit more from using the land themselves rather than selling it. The village has done well in tobacco production. Buying or renting land further away from the city and the road means that distance reduces labour productivity due to transportation costs, and theft is also a common problem.

After the drought in 2004 a large land area along the main road was sold to the company Mouvesa. The village that sold the land, Chimombo, used to grow maize and get employment at the research station nearby. Others land was bought by individuals working at the research station nearby. The villagers are now supplying labour to those who bought the land. The land that was sold was considered to be less productive than the land in Mpingira village.

Land sales have become common along the main road over the past 10 years. Most buyers are people from town, who often have made rural people believe that the government – for planning purposes – will take their land without compensation. Hence villagers have preferred to sell the land before they are evicted to make as much as possible out of it. Others could sell land to obtain capital. The rural people that sell the land either survive on casual labour in the fields they have sold, or go deeper into the rural areas to buy or rent cheaper plots.

The process of buying land is quite elaborate and has to be followed to ensure security of the land after buying. Currently the cost of land is not less than MK 30 000 per acre. However, a lot of costs are incurred in the process. The parties involved report the sale to the village headman, who gets at least MK 5 000 from the seller. Three witnesses are supposed to be there to witness the payment of the MK 30 000 to the seller. The chief will then report to the Group Village headman (GVH) who gets an additional MK 10 000. The GVH in the company of the buyer then reports the sales to Senior Group village headman (SGVH) who gets an extra MK15 000 from the buyer as well. The SGVH is responsible for reporting the sales to the Traditional Authority (TA) who signs the final document.

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<sup>48</sup> An acre is estimated by the community at: 70 ridges by 70 meters. However, what was reported as a plot in the discussion and referred to as an acre could be much less. Formally, 1 acre covers about 4000 square meters or approximately 0,4 ha.

The buyer has to pay at least MK 25 000 in order to sign the document. In total the buyer pays around MK 85 000 per acre during the whole process. The buyer can then claim ownership of the plot of land. To ensure that the land is secured one can go to the district commissioner with the documentation from the TA. Thereafter the land can be surveyed and registered, turning it into leasehold.

### **Labour markets**

The labour market is very active with labour being provided to households that are labour-poor and to absentee tenants. Labour is mostly provided by poor households. Moral hazard in the labour market is mostly overcome through specification of piecework. Typical piecework rates for different types of agricultural work were reported as follows:

Land clearing	900 MK/acre
Plough ridging 1 500	“
Planting	1 000 “
Weeding	1 400 “
Fertilizer application	1 000 “
Harvesting maize	150/day/person
Harvesting tobacco	5 000 MK/acre
Harvesting groundnuts	1 500 “

### **Credit markets**

Community members have not taken any credit so far. Lending institutions are available and have offered them credit; however, they have not been satisfied with the conditions given by the lending institutions. The interest charged by the credit companies is too high, and repayment conditions do not match with the growing season and the time they sell their crops. Thus current conditions means that the community has not entered the formal credit market.

However, informal lending exists among community members, especially among people that know each other well. The loans are at zero interest. The money is mostly borrowed from well-off farmers in times of emergencies.

## **VILLAGE INTERVIEWS REPORTS II**

Name of village:	<b>Chibungo</b>
District:	Lilongwe, Central Region
Land tenure regime:	Matrilineal
Data collection:	Separate focus group interviews with village men and women, carried out 18.03.06

### **Village characteristics**

Chibungo village is located at approximately 50 km from the City of Lilongwe, at a distance of 15 km from the Lilongwe-Mchinji main road. The village is fairly old and relatively big, with 14 groups of extended families. The village has approximately 240 households. The village has an approximate 100ha, which gives one acre per household on average. The land was registered under the Lilongwe West Land Development Program in the early 1980s. At the time, the land title was given to the Village Headman. In the interviews men reported that during the demarcation and titling programme they were involved in identifying the boundary of their village and any disputes with neighbouring villages were resolved there and then.

### **Access to land, inheritance, marriage and residence patterns**

Villagers access land through inheritance, marriage, buying and renting. Land is in the present generation inherited from parents who were allocated pieces of land by the Chief following the Lilongwe West titling programme. New families either buy land within the village or some rent land from fellow villagers. No households were reported to be completely landless at present. However, some households have only very small pieces of land to enable them meet their food and resource requirement (near landless). About 50% of the households rent in land from within the village or from other villages.

Inheritance in the area is influenced by *matrilineal* rules. However, this does not mean that in the village land is normally passed on between women from one generation to the next in the same lineage. The matrilineal rules in this village seem to be practiced in a situation of very high pressure on land, under a regime which is probably also influenced by the Lilongwe West titling programme.

#### **Group interview: 10 men**

Eight of 10 have accessed land through inheritance, and two have bought land. Their farm sizes were between 0.5 and 5 acres per household. Four rented in land, with rental areas varying from 1 acre to 1.5 acres. The rent per acre reported by the men varied between 600 and 1100 MK/acre. One rented land for 3 years at 3000 MK/acre. All of them rented in the land from others within the village. One rented out land at 1800 MK/acre to a “desperate” tenant. Five of the households participate in the labour market, 4 hire out labour and one hired in labour. Three out of ten obtained fertilizer through credit.

#### **Group interview: 10 women**

Four of 10 women were born in the village, and married in matrilocal *chikamwini* marriages. Six were married into the village, living in patrilocal *chitengwa* marriages. The high proportion of patrilocal residence was explained by the women as a result of the husband’s influence: “He takes the woman to the village”. The four who were born in the village reported to have inherited land from their mother/mother’s family. The women who had married into the village said that the household’s land belonged to the husband.

Four of the 10 women are married to polygamous men. They see polygamy primarily as a disadvantage. It means that the husband has to share scarce resources between several households. The men do not consult with their (first) wife before they remarry: “You just discover that he is married somewhere else”.

The women reported that their household land holdings varied between 1 and ½ (or less) acre, the women giving the following details<sup>49</sup>:

- A. Matrilocal *chikamwini* marriage. She inherited ½ acre, while 1 sister and 3 brothers did not inherit land, and live mainly from piecework. She believes her brothers, and not her 4 children, will inherit the land after her.
- B. Matrilocal *chikamwini* marriage. She inherited ½ acre together with her 2 sisters. They now cultivate the land together. One brother left the village, doing piecework somewhere. She believes her sisters and brother will inherit the land, not her 4 children.
- C. Matrilocal *chikamwini* marriage. She inherited 1 acre, while 2 sisters and 1 brother did not inherit any land from her parents. She believes her uncle will inherit the land after her, then comes her brother. She has 4 children.

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<sup>49</sup> The average landholding reported in the group of women was thus smaller than landholdings reported in the men’s focus group.

D. *Chitengwa* marriage. The household has  $\frac{1}{2}$  acre of land from the husband's family. She believes the relatives of the husband will inherit this land. Her sisters and brothers have taken over her parents land in her natal village. Her children will not have access to that land, and will probably live by piecework.

E. Matrilocal *chikamwini* marriage. She inherited  $\frac{1}{2}$  acre together with her 2 sisters. 2 brothers married out of the village. The land cannot be further subdivided and shared among the children in the next generation.

F. *Chitengwa* marriage. The household has 1 acre of land inherited from the husband's family. In her natal village she has 5 sisters who are married there, using her mother's family's land. She believes she has no claims to that land.

G. *Chitengwa* marriage. The household has  $\frac{1}{2}$  acre which belongs to the husband. In her natal village, sisters and brothers who have married there have taken over and cultivate their parents land. She believes has no claim to that land now.

H. All married into the village, living in *chitengwa* marriages, with about 1 acre of landholding per household, and expecting the husband's relatives to inherit the households' land.

In addition to the land inherited and cultivated by the household comes the rented land. One woman rented 2 acres from outside the village, paying MK 2-3000 per year. She earns money to rent land from brewing and selling beer. Another woman, who was living alone since the husband had "gone somewhere to remarry", also rented land on her own account, paying MK 2000 per year for  $\frac{1}{2}$  acre. She cultivated both maize for consumption and groundnuts for sale on the rented land.

### **Wealth indicators**

Currently only 7 households own cattle and none use oxen for draught power. Most of the farmers grow tobacco, however due to lack of inorganic fertilizer input their harvest is low. Few houses were roofed with iron sheet, indicating that most of the households were poor. The women in indicated that food insecurity is a major problem in the village, because of lack of land in combination with lack of agricultural inputs.

### **Division of labour, incomes and household decision making**

All agricultural work is mostly done by both men and women. Polygamous men shift between households: "spending one week with this wife, one with the other". According to the women, the husbands usually make the decisions on how to use money. This includes decisions on using household money to rent land. Of 10 households, 6 cultivate tobacco. However, it is the men who have the power over the money from the sale of tobacco. They don't make budgets and discuss it with their wives. According to the women, husbands use most of their money on beer (and on other women). Of the 10 women in the focus group, 7 brew beer for sale, as "it is the only way to get money for soap". If women controlled more cash, they would prioritise to spend more on fertilizer. The women said that they, since they were always working on the land, prioritised buying fertilizer higher than the men would.

### **Land markets**

Land markets are active in the area with an estimated 50% of the households renting in land. Land sales are not common, but some have been able to acquire land by buying. The transactions have been among the village members and also with other people from surrounding villages. No land has been either rented out or sold to people very far from the village, e.g. migrants or people from the city. According to the women, no land has been sold out of the village. However, most of the community workers, teachers and government employees in the area are involved in land renting from the villagers.

### **Land rentals**

Most of the land rented in is used for tobacco production. Households rent in land within the village. No households were found that had rented in and rented out at the same time. Renting in or out land is mostly done between the tenant and the landlord without the involvement of the chief, when both the landlord and tenant come from the same village. When the tenant comes from a different village, the village head in the village where the land has been rented is informed as a security measure in case disputes over land arise later in the season. When reporting to the village head a small token of money is given depending upon tenants' ability, however it is not a requirement, according to the Village Head. No written contracts are made between the landlord and the tenant but only verbal agreements are made. In special cases land is rented for more than one year and the contract is verbally agreed upon in the first year. There are no specific land use practices for the long term contracts that are agreed upon. That means that use of the land is based on the tenants' desires.

### **Characteristics of landlords**

In this area landlords are poor farmers who rent out land for three main reasons;

- a) Going out to become tenant in tobacco estates outside the village or even outside the district, e.g. in Kasungu and Mchinji
- b) As a source of cash for inputs like fertilizer and seeds
- c) As a source of cash for food

The households that rent out land can also sell labour on their own rented out piece of land to increase income. Most times the labour is provided for ploughing and harvesting.

### **Characteristics of tenants**

Tenants are either better off farmers, near landless or landless salaried workers in school, clinic and ADMARK. Their wealth status enables the farmers to access credit from lending institution like Malawi Rural Finance Company. The tenants will rent in land to increase their land holdings to meet their consumption needs.

### **Land contracts and rental prices**

Tenants fetch for land to rent but the prices are set by the landlords. The main rental system is fixed rent paid upfront. Currently the prices, as reported by the men, range from MK600 to MK1100 per acres per year. However, one household received MK1800 for renting out; because the tenant "was desperate" and the plot was also larger than an acre. Rental prices reported by women were higher; MK 1500 – 2000 for a plot of ½ to 1 acre. Both quality of land and the negotiating power of the tenant may influence this reported variation in rental prices. Land rentals are done as a source of cash for food and inputs. Therefore prices of land rentals have also been increasing in the past 5 years as a result of increasing food prices and growing land scarcity.

### **Land sales**

Land sales are not common, however some farmers reported to have bought their pieces of land. When land is bought, the men feel more secure as they are able to own the piece of land – more "completely", without interference from lineage claims. Witnesses are used when buying land, in most cases witnesses are close relatives. The buyer, seller and their witnesses both go to the Village Head to report. The Village Head then reports the land sales to the Group Village Head who is responsible for reporting the sales to the Traditional Authority (who is referred to as *Chalo* – meaning land). This is where a written document is signed and payments are done. Payments to the chiefs are done by the buyer of the land during each visit to the chiefs. There is no set fee paid to the chiefs but the buyer only pays what he can manage.

Most sales so far have been distress sales, as reported by the villagers, or sale of excess land. Sellers of land reported that they sold land in order to get money for emergencies, e.g. funeral, hospital bills and food. However, there was nobody who was reported to have sold all the land they own. All the people that sold land only sold a portion of their land. A lot of land was advertised for sale after the 2004 drought

### **Land disputes**

There may be land disputes within and between families. Such conflicts typically occur upon death. They may be taken to Village Headman, then to Group Village Headman and to the TA, and possibly to the District Council. Every year there may be 3-4 border disputes. These are typically solved by the Village Headman. Other land disputes may go to the District Commissioner.

### **Land tenure insecurity**

Land may be "lost" when parent die, as land may go back to the mother's lineage. Children may then be denied access. Orphan households (about 10% of the village households) may be tenure insecure. Men have control of family land in their role as brothers and uncles, according to matrilineal rules. Women have no control of the household land in case of *chitengwa* marriages, unless the land is bought. However, given the high pressure on land, it appears that the women also lose their matrilineal land rights in their natal village when moving to the husband's village. Women married into Chibungo village thus appear to be extremely vulnerable to land tenure insecurity, especially in the case of husbands' death.

### **Land reform and demand for land titles**

Villagers had heard about the land reform but knew no details. When asked whether they thought receiving individual titles would be good, the men answered that it may help to increase tenure security and reduce conflicts. But there could also be cases where the son has received the title from he father, and the brother of the father may want to come and take the land. Inherited land could also be taken by the family, and the outcome might be more family conflicts.

According to the women, joint titling (husband and wife) would be a good thing, if the title passed on to the children in the case of parents' death. At present, they thought the children were likely to lose out with regard to land rights and inheritance.

### **Labour market**

Labour is an important source of cash among the community. Most labour is sourced within the village, mainly from the better off households and salaried employees. Piecework is dominating and is available almost all year round, but it is abundant during the peak agricultural seasons. Daily wage may be used when the payment is food. Payment for labour is mostly in cash, however in hunger times, labourers prefer payment in kind, e.g. maize flour. Some rent out land and sell their labour to their own tenant.

Payment for wage labourers comes from household sources of income, such as salaries or crop sales. Households with livestock can sell these to get cash to hire in labour. It is the seven households with cattle in the village that actually hire in labour. Men provide more of the labour in this labour market than women.

### **Credit markets**

Credit facilities are available to the community in the area, but only to those with tobacco permits to sell at the auction floors. Malawi Rural Finance Company provides credit facilities in form of

fertilizer. Those with permits to sell at the auction floors are given priority by MRFC because repayments are deducted from the auction floors before the farmers get the money. About 20% of the total households have access to the credit facility. However, this arrangement seems to benefit men rather than women. According to the women, credit groups targeting women would be a better idea, since credits targeting households will be controlled by the husbands.

Farmers without permits can have agreements with those that have permits and access fertilizer through them. Through these informal arrangements, some farmers are assisted to relax their liquidity constraint and are able to get permits and access fertilizer. Labour is the main source of cash in the village but in cases of sickness creating a need for health expenditures relatives may provide help. After the drought in 2001-2002 livestock was sold to obtain cash in addition to selling of labour and renting out of land.

### VILLAGE INTERVIEWS REPORTS III

Name of village:	<b>Kalungu</b>
District:	Machinga, Southern Region
Traditional Authority:	TA Liwonde, Chief Chigumula
Land tenure regime:	Matrilineal
Data collection:	Separate focus group interviews with village men and women, carried out 21.03.06

#### **Village characteristics**

The community is one of the first resettlement sites of World Bank *Rural Community Land Development Programme*. The community was relocated from Chimbalinga Village (TA Bvumbwe) in Thyolo District, to the district of Machinga in November 2005. This group of resettled people now occupy a 79 ha estate, with 2 ha land plots allocated to each household. At present they form a trust, to be formally converted into a village at a later stage. This means that the group in terms of local government administration belongs to another – neighbouring – village.

#### **The relocation process**

The resettled households all come from one village in Thyolo District, and belong to the Lomwe ethnic group. They first heard about the project through the radio, but Thyolo District Assembly also held a campaign meeting where local chiefs informed people about the project. Interested individuals and households in the village of Chimbalinga then organized themselves into a group of 35 families. According to the women, the decision to move “came from the women”, but also was a joint decision in each household. The TA provided them with forms for applications, which they sent to the government in order to join the project. When the application was accepted, the group had to meet and organize themselves within a period of nine months. The group elected a committee of ten. This group was responsible for visiting several estates in Machinga made available through the project. One of three estates visited was chosen by the group, and the land was bought (with project funds) to resettle under the project.

The chosen estate was surveyed by the government; a map produced and given to the group. The World Bank also made an assessment of the estate to ensure that it met the project criteria. Then the price for the estate was negotiated between the community committee and the (former) owner of the estate. The agreed price in this case was MK 15000/ ha, totalling MK 30 000 per household for a 2 ha plot. In addition, each household made a contribution to buy the remaining 9 ha land, which will be used for amenities and social infrastructure like school, hospitals and shops.

The group was relocated from Thyolo to Machinga on 9th November 2005. That was after the growing season has started, making it difficult for the group to settle when falling behind in starting farming. Thus they have just cultivated small plots that were planted late this first year, and will demarcate and distribute the 2 ha land per household later after the growing season. They had already planted crops on the land in their area of origin, and have made arrangements to take care of this production as well. There has been some travelling back and forth, while a number of households have one or more members staying in Thyolo to look after their garden there.

In addition to money to buy land, the project funds also included a resettlement allowance of MK 6450 per family for the construction of houses and a “starter pack” for agriculture, e.g. money for labour, seed, and fertilizer. Each family got 10 kg maize seed (hybrid variety DK 8051), 2 bags of fertilizer (1 bag urea and 1 bag composite 23-21-0-4s). The cash received from the project to pay for labour (help with ploughing and weeding) was MK 2500. Since they faced food shortages from December onwards they used the resettlement allowance and labour money to purchase food. Then the allowance for labour was increased to MK5000.

### **Conditions in Chimbalanga, the original ‘sending’ village**

The people who have resettled mainly decided to move due to land pressure. In Chimbalanga, the matrilineal gives women rights of ownership to land, and residence is commonly matrilineal. In the case of death or divorce of the wife, the man goes back to his parental home and the land is retained by the wife’s parents or else by her lineage. While female children can inherit land, male children in principle have only user rights. The general picture for the resettled households from Chimbalanga was that each of the families have less than 0.5 acres of land inherited from the parents’ generation (see table below). The small plots and increasing pressure on land meant that children had no land to inherit.

At the household level, men would decide on the types of crops to grow. Important crops grown in the area include maize, cassava, pigeon peas, groundnuts, beans, green peas and pumpkins and vegetables. Currently the plots that they used to cultivate have been given to their relatives. However, this year all the men reported that their households were still cultivating in the sending village, and they plan to go back to harvest and bring back their harvest to Machinga.

The Table below shows who will acquire the plot owned by the resettled households, as reported by the men. It shows that all the plots have been given to women (either mothers in law or sisters in law).

**Table 1. Land endowment, renting activity and reallocation of land in Chimbalanga**

<b>Households represented by men</b>	<b>Size of land cultivated, acres/ H</b>	<b>Size of land rented in the previous year, acres</b>	<b>Size of land rented out in the previous year</b>	<b>Land given to after resettlement</b>
1	0.25	0.5	0	Mother in law
2	0.25	0.5	0	Mother in law
3	0.25	0.5	0	Sister in law
4	0.25	0.5	0	Mother in law
5	0.25	0.25	0	Sister in law
6	0.25	0.5	0	Mother in law
7	0.25	0.5	0	Mother in law
8	0.25	0.5	0	Sister in law
9	0.25	0	0	Mother in law
10	<0.25	1.0	0	Sister in law

11	0	0	0	Mother in law
12	0.25	0.5		Sister in law

From this Table we see that none of the households had more than 0.25 acres (0.1 ha) of land in Chimbalanga, but almost all managed to obtain some extra land through land renting. Compare with the table below, as reported by the women.

Households represented by women	Size of land owned, acres	Marriage status / Husband living where?	Number of children (Gender)	Land given to after resettlement
A	0.25	M /H in Thyolo (sick)	10 (6 F/ 4 M)	
B	0.25	Single	2 (2 F)	Sister
C	0.25	Widow	4 (4 M)	Sister
D	0.25	Married/ H here	6 (2 F/ 4 M)	Daughter
E	0.25	Married/ H here	1	Younger sister
F	0.25	Single	3 (2 F/ 1 M)	Mother
G	0.50	M/ H and all children in Thyolo	5 (3 F/ 2 M)	Eldest daughter
H	0.25	M/ H in Thyolo	6 (3 F/ 3 M)	Sister in law
I	0.25	M/ H here + M, 1 B, 1 Z	1	Younger sister
J	0.25	M/ H here	7 (5 F/ 2 M)	Sisters
K	0,50	M/ H here	2 (2 M)	Sister
L	0.25	M/ H polygamous in Thyolo	3 (2 F/ 1 M) one here	Sister in law

### Land markets: Land rentals in the ‘sending’ village

Apart from getting land from parents, households were also able to increase their access to land by renting in, in order to increase food supply. Almost all the households in the group had rented in land in their original area. Ten of twelve men that were interviewed had rented in land in the previous year. However, the high demand for land meant that, typically, it is the tenants that have to search for landlords, and in some cases they are not able to find land to rent. An important reason for renting in land is to increase food supply. Those with children typically want to rent in land. Landlords are typically labour-poor and have excess land.

Renting is on fixed rent basis for one year in kind or cash. In most cases households will first work to get cash to pay for the rent. The rent ranges from MK 500 – 2000/acre, or they can pay in kind with one bag of fertilizer in one year for an acre of land. Price of land is determined by size and quality of land. The contract is usually verbal, made in the presence of two witnesses, one for tenant and the other for the landlord.

There were no land sales in Chimbalanga, as land is managed as the heritage for children. There are no titles for the land. With resettlement, the land is left in the hands of the wife’s family members.

### Benefits of resettlement

Both men and women express that the benefit of this resettlement is that it has given them more land for growing of crops, which they plan to sell. This can help them to improve their households’ welfare. They also believe that the land is fertile and hence they expect good yields. The new area also provides them with access to natural resources such as trees (for fuelwood), grass and rivers,

which they could not access in their sending area. According to the men, the river provides a possibility of practicing irrigation farming.

### **Land certification**

According to the women, land titles have to be in the name of both spouses. Their children (daughters) will inherit the land in Kalungu. "Sell the land? No! My daughter would starve."

### **Problems faced**

Ten households of the 35 in the group have returned permanently to Thyolo, but they have since organised replacement from the original area. This group left because of problems they faced in the settlement area, such as:

- **Water**  
The area has no close-by source of drinking water. Currently the group is using a water tap at a church some three km away from their settlement. The women have to walk to the church to fetch water. They tried to dig a well close to their settlement, but a conflict arose with the neighbouring village, and they stopped digging. They have since been promised a well by the project (administration).
- **Social services**  
Social services are at a distance: Hospital and market are approximately 25km away. The school is also far from the area, and the children have problems in walking to and from school. They have been promised some facilities through the Malawi Social Action Fund (MASAF). However there are problems with the actual implementation due to the established procedures of MASAF. This implies that the settlers' prioritisations need the approval of the District Assembly.
- **Conflicts with neighbouring villages**  
The group feels that it has not been well received by the surrounding communities. They have not met the chief (TA) who is regarded as the custodian of all the land in the area. A major conflict with the surrounding villages has been over forest resources. The surrounding villages used to get forest products from the estate area they have settled on. As a result there have been confrontations between the settlers and the surrounding villagers, and they have confiscated the tools of some of those coming to cut trees. The resettled group had also participated in food-for-work activities together with the neighbouring villagers, but they were not informed by the neighbouring villagers when the food payment arrived, and therefore did not get their payment. The neighbouring villagers also used their names to increase the amount received of free-food distributions, but also here they did not get their share. It is evident that they have not become integrated, their presence has not been legitimated by the TA in the area, the chiefs do not attend to their complaints, and they suffer from social exclusion. So far they have not received titles to their land and feel tenure insecure due to the local conflicts. This explains why 10 households actually returned to Thyolo.<sup>50</sup>

### **General remarks**

The remaining members of the resettled community feel that they are better off in the new area than before. They needed land and hope to make full use of it to improve their welfare. However, they need social amenities and would also like to have access to credit for business and irrigation projects (i.e. water harvesting). Livestock will, according to the men, be a good way of diversifying their livelihoods, a valuable asset in case of emergencies, and a source of manure. According to the

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<sup>50</sup> We were after our visit informed that cholera had broken out in the area causing additional health risk and highlighting the acute need for a safe source of drinking water (Dr N'gong'ola, Bunda College, pers. com.).

women, they will use cash from sales to buy fertilizer. The next priority is good accommodation, including iron sheets for roofs, and perhaps a bicycle!

## VILLAGE INTERVIEWS REPORTS IV

Name of village:	<b>Mijale</b>
District:	Machinga, Southern Region
Traditional Authority:	Chiwalo
Land tenure regime:	Matrilineal
Data collection:	Separate focus group interviews with men and women, carried out 21.03.06

### Village characteristics

Mijale is formed by a group of 35 resettled households under the World Bank-funded *Rural Community Land Development Programme*. The group is currently registered as a trust, but will soon be formally converted to a village. Mijale is one of three new settlements established with people who have relocated from within Machinga district. The majority originally lived in two villages: Msulupi and Chimwaza and are predominantly of the Yao ethnic group. In Mijale they have planted maize, tobacco, cassava, and sweet potatoes. The first elected head of the settlement is a woman. She does, however, expect to be replaced by another leader in the next annual elections.

#### The relocation process

The group members heard about the resettlement programme from the radio. The TA also called a meeting to inform people from different villages about the programme and how to proceed. Individual households filled in forms and submitted them to the Committee overseeing development activities in an area, Community Overseeing Committee (COC) under the decentralized Government structure. The COC was responsible for selecting the beneficiaries, and sent the names of 35 households<sup>51</sup> to the Traditional Authority (TA Chiwalo) for approval.

The forms of the approved households were then sent to Lilongwe for evaluation. The selected beneficiaries were asked to form a committee to choose an estate for relocation close to their area. They elected a headwoman as leader of the committee. Negotiations were made between the estate owners and the committee, and the price agreed upon for the estate was MK 7 000/ha. The World Bank also came to assess the estate, and the group was then allowed to move into the estate land. To ensure sustainability the group was trained in group dynamics and agricultural production, by trainers from the District Assembly's office.

### Conditions in the villages of origin

The group indicated that they faced high levels of land scarcity in their villages of origin. The land in Chimwaza and Msulupi was inherited from parents, following matrilineal rules. After marriage a couple would normally settle matrilocally – *chicamwini* marriage – in the wife's village. However, the land they used to cultivate had over time been so much fragmented that their parcels were too small to sustain their food requirements. Another reason for the land scarcity was that three decades ago land was taken from the local villages and converted into estates. These estates were given to the then party loyalists; most of them not resident in the area. Later the estates were closed. The closure of the estates was seen as a result of lack of resources and skills on the owners' side. The estate owners then started to rent out the land to permanent tenants (who would not go back to their

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<sup>51</sup> Of the approved member households, 5 are female headed. Most of the men had attended at least primary school except for 3 that had never attended school and one that went up to secondary school.

original homes) and to the people around the estates. Two of such estates have since been bought and resettled under the World Bank programme.

In the current group, 8 of the men were formerly tenants who used to work in the estate, and were coming from nearby villages. Others came from more distant locations, some as far as from Chikwawa, which is 240 km away (see Table below).

**Table 1. Land ownership, land renting, and origin of settlers interviewed<sup>52</sup>**

Households represented By men	Size of land			Distance to original village (Km)
	Previously cultivated	Renting in	Renting out	
1	0.25	0.25	0	0.5km Village next to estate
2	0.5	1.0	0	0.5km Village next to estate
3	0	1.5	0	70 km Liwonde
4	0.5	0	0	0.5km Village next to estate
5	0.25	0	0	0.5km Village next to estate
6	0.25	0	0	0.5km Village next to estate
7	0.5	0	0	0.5km Village next to estate
8	0.25	0	0	0.5km Village next to estate
9	0	0.5	0	240 km Chikwawa
10	0	0.5	0	2 km
11	0	1.0	0	240 km Chikwawa
12	0	0.5	0	0.5km Village next to estate
13	0	0.5	0	120 km Zomba
14	1.5	0	0	0.5km Village next to estate
15	0	0.5	0	70 km Liwonde

**Table 2. Land endowment, marriage/household size and reallocation of land<sup>53</sup>**

Households represented by women	Size of land			Marriage – household/ Number of children (M/F)
	Owned	Renting in	Out	
A	0	0.25	0	Married/ 1 (M)
B	0.5	0	0	Married/ 3 (1 F/2 M)
C	0	0.25	0	Married/ 3 (1F/ 2 M)
D	0	0.50?	0	Married / 3 (1 F/ 2 M)
E	0	0.50	0	Divorced/ 4(2 F/ 2 M)
F	0	0.50	0	Married – Polygamous husband living with wife in another village/ 5 (4 F/ 1 M)
G	0	0.50?	0	Married/ 8 (2 F/ 6 M)
H	0	0.50?	0	Married/ 2 (1 F/ 1 M)
I	0	0.50	0	Married/ 4 (2 F /2 M)
J	0	0.50	0	Single/ 4 (3 F/ 1 M)
K	0	1.0	0	
L	0	0.5	0	

<sup>52</sup> As reported by men in focus group discussion

<sup>53</sup> As reported by women in focus group discussion

### **Land markets**

Though land scarcity in the area is rampant, most people are too poor to buy land. Land sales are not common in the area. Poor people can, however, access land by renting in land from the dormant estates. This area is also far away from trading centres where there could be more potential buyers of land. Land close to trading centres is in demand by businessmen and (formally) employed people.

### **Land rentals**

Most of the land rented in the area is rented in from abandoned estates. The owners are no longer cultivating these estates; probably they had no financial capacity and skills to run the estates. The common crops grown by the tenants are maize, beans, pigeon pea and groundnut. Tobacco was viewed as a risky crop to grow on the rented land, as the tenants feared that banks or some other institutions that had unpaid loans with the landlords would confiscate their tobacco to repay loans of the landlords.

The contracts in the rented land are verbal. The type of renting being practiced in this area is sharecropping. The tenant pays 50% share of the main crop to the landlord after harvesting. In most cases the main crop grown is maize. The cost of inputs in the rented land is borne by the tenants. In case of free fertilizer distributions, the tenants use the fertilizer in their inherited land rather than the rented land. This greatly reduces the productivity of the rented land. The landlords do monitor the tenants mostly during harvesting to avoid defaulting. There has been no situation of eviction from estate land by landlords, and most contracts are automatically renewed.<sup>54</sup>

Landlords may have to offer sharecropping contracts because the tenants are also cash-poor and because employment opportunities are limited in the somewhat isolated location. Tenants look for land, and approach the landlords. There is abundant idle estate land. Some households are still unable to find land, as the landlords limit the number of tenants and leave some land uncultivated.

### **Characteristics of landlords**

The landlords are the estate owners and have abundant land. They are in most cases sons or daughter or relatives of either deceased or non-resident owners, who do not cultivate any crop, but rely on the harvest from the tenants for their survival.

### **Characteristics of tenants**

Tenants are poor households with very little land but abundant labour. Table 1 shows examples of how much land was owned by most of the tenants before resettling into the new area. Lack of land for cultivation forced them to look for more land. However, due to lack of cash they opted for share cropping. When people lack land for cultivation another option is to provide labour for food, mostly during land preparation period, i.e. October to December.

### **Labour markets**

Employment opportunities are primarily in agriculture and are seasonal, from October through December. Employment is sought in the surrounding villages, and current payment is MK 2000-2500/acre (for cultivation). However, in times of hunger employment is also sought in other areas, such as the fishing villages along the lakes of Chilwa, Malombe and Chiuta. In some years, people in this area have gone to Mozambique to look for work. Payment in Mozambique is in kind, in the form of maize, cassava and sorghum. Almost all of men interviewed had gone to Mozambique in the year 2002 due to drought, seeking piecework there since the wages were better (one tin = 20 litres of

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<sup>54</sup> Lower use of fertilizer on rented in plots than on own plots may be explained – in economic terms – by Marshallian inefficiency and credit rationing.

shelled maize/ 0.25 acre). To cross the border they paid MK 50 for a 7-day permit on the Mozambican side.

The men in the group were positive to the idea of Work-for-fertilizer. Some of them had also participated in such programmes, where they were paid the equivalent of MK200/day in road building. However, with the current World Bank project they were given cash to hire in labour themselves. They have since been hiring labour from the surrounding villages. A survival strategy for poor people in this area seems to be to work for cash to buy food or to work for food. In some cases they go to Lake Chirwa and Lake Chiuta, Lake Malombe to fish and sell the fish.

### **Credit market**

The resettled community has no access to credit because there are no lending institutions in the area. However, informal lending among kin is done during emergencies. These loans are given at zero interests and repayment period varies according to the nature of emergency.

### **Land certification**

The land where they are currently living is not yet certified. They do not have any documentation. However, the men express that they are not worried because the process of occupying the land involved the Traditional Authority and the District Councilor, in case the previous land owner comes back to grab the land from them. This indicates the trust and role of local leaders in ensuring community security and welfare. Still, they would like to have land certificates, as this will increase tenure security for their children. In case of changes in the policy, the certificate can increase security and they can easily improve land by growing even tobacco. They indicated that they would be willing to pay for land certificates, with maximum Willingness to pay (WTP) in the range of MK 50-500.

There is a general feeling **among the men** is that the land in the new area belongs to the man in the household and the certificate should be in the man's name. They are willing to include all children on the certificate to ensure their future livelihoods. However they feel that having the man's name on the certificate will increase security for the man, which they feel is threatened under the current matrilineal and matrilocal system. They indicated that men are land insecure in the traditional matrilineal system. Still they can invest in land. In most cases they invest for their children. When asked whether they would be willing to sell their new farms for MK 30 000 they refused strongly, and some said they would not even be willing to sell it at a million MK.

The **women** said that the issue of land certification would come later. However, they apparently took it for granted that land titles would either be held jointly by both husband and wife or held by the wife alone. There also seemed to be a preference among the women for inheritance not only for daughters but for all children. They expected the headwoman to witness the (inheritance) handover of land "from a woman to her children".

With regard to household decision making, according to the women, men have the money – "since the women may lose it". However, how to use household money sometimes brings up discussions they told, and men then become violent. After that it happens that "the man does not come home" and he "loses the money". Afterwards they have to sit down to agree on how to use the money.

### **Benefits of the resettlement project**

- The households will be able to expand their farm enterprise by growing cash crops like tobacco, sweet potato and cassava that they were not able to grow due to lack of land in the sending areas.

- Increased social network due to the formation of the trust will also give them opportunities in accessing loans and other resources for agriculture.

### **Problems**

- Lack of social amenities like hospital, school and shops.
- The settlement is located in between rivers and is therefore isolated.
- Access to drinking water is difficult in the area. Currently the community is using unprotected water from a stream for domestic uses.

## **VILLAGE INTERVIEWS REPORTS V**

Village name: **Likoswe**  
District: Chiradzulu, Southern Region  
Traditional Authority: Likoswe  
Land tenure regime: Matrilineal  
Data collection: 23.03.2006.

We had two interviews in this village, one with the Chief and one with a group of villagers. The information from the chief was contradicting the information from the group on the existence of an informal land renting market. We may interpret the information from the Chief as the local norm while the information from villagers as the practice. We first present the information from the chief and then the information from the villagers.

### ***Interview with TA Likoswe***

#### **Land ownership and land scarcity**

From ancient times the chief and the people were the owners of the land. The chiefs were there before the Government. The Government came begging land from the TAs. The Government had no impact on how land was used. The way the chief rules over land is learnt from the ancestors, not from the Government. The people of Malawi rely very much on the land they are staying on and cultivating.

Previously land was abundant but population has become high, and now there is hunger in Malawi. Hunger comes from small space for cultivation and land is not enough for the family. The chief has responded to this by advocating child spacing to reduce the number of children. People are forced to go for counselling and are asked not to get more than 2-4 children. The chief has also begged donors to help with food. The project with child spacing started 10 years ago and is in cooperation with the Government. People have now become more serious about family planning. The growing problem of HIV/AIDS requires counselling and people are encouraged to go for regular testing. Due to this disease the number of orphans has increased. The chief has in collaboration with the Salvation Army organised an initiative asking village people to give up a piece of land for orphaned children. This land was planted with maize, but they had no funds for fertiliser so the yields were very poor. The orphans therefore still lack food. They now have land, but lack fertiliser.

Land shortage is particularly serious because people are unemployed. It is too difficult to get employment. Only some temporary jobs are available.

### **Land sales and land renting**

No selling or renting of land is allowed in the area of the TA, according to TA Likoswe. Some people rent out land they have failed to cultivate, but this is unlawful. Once the TA discovers he will call both parties and ask them to stop this practice. He has, however, not found any cases in his TA. He goes around and inspects that this does not happen. Land renting is not acceptable due to the shortage of land. Sharecropping is also unlawful.

Land was given freely and should therefore not be sold or rented. If some fail to cultivate their land they should get help from their neighbours but the neighbours should do this without compensation. This is what happens if some fall sick. The system of helping neighbours (still) works, and is better than renting. He is not sure whether other TAs practice this in the same way.

### **Land inheritance, family and kinship relations**

Their system of inheritance and succession is based on matrilineal and matrilineal rules and practices. Women own the land and their daughters inherit the land. All daughters get a piece of land after their mother. Already when they are small they are told by their mother which plot will become theirs. There is no minimum size for land. Land plots can become very small. Boys are not given any land but help their parents. If a mother gets only sons the land will be taken over by her sisters/neighbours.

Boys usually (should) marry after they have become 21 years old and girls after they have become 19 years old to make sure they have finished schooling first. Poverty and death of parents may, however, cause some girls to marry earlier. Husbands move to the place of the wife. They stay there and cultivate together with their wives. If the wife dies they will leave the place and the children and go somewhere else to marry. They only take with them their clothes and a small share of the harvest (1/4). All animals and other investments are left behind for the children.

The brother of the mother (uncle of children) comes in, in case of emergencies, to help the mother and children. In case of the death of the mother, the uncle or aunt may take responsibility for the children. The aunt will be responsible for the land till the children are old enough. The father may also come and help the children but he is not the main responsible for the children. The men do not have to pay anything when they marry, and they get land in their wife's village for free, but they also have to leave without anything when the marriage is over.

The Headman, Group Headman and Traditional Authority do not move to the family and land of their wives. They are allocated special land and houses, and the wives move in with them (virilocal residence). However, the wives of the local authorities keep the land at their home village, and may cultivate that land as well, or they may have the neighbours cultivate it for them. The headman and the chief therefore have more land (actually more than the double of ordinary villagers).

In the past chiefs used to have at least 2-3 wives but the current TA Likoswe thinks it is not good to have many wives. He himself has only one. The population is high and land is limited. Also the HIV/AIDS disease means it not good to have more wives. Poverty also makes it bad to have many children. Also the salary of the TA is too small to have more wives. Polygamy is still common in the area but he tries to discourage it. But all people do not listen. Some men are not truthful to their wives and this is bad with the dangerous disease, and this causes children to suffer. People have now started to learn, however, as this disease is a serious lesson.

### **Land conflicts and conflict resolution**

There are many land disputes in the TA area. The most common types of land conflicts that the TA Likoswe has to deal with are boundary violations, and cases where a garden has been left without anyone cultivating it, and someone else comes to cultivate it. When the original owner comes back that is when the dispute arises. He also deals with a lot of family disputes but these are usually not land related.

In the case of boundary disputes the chief visits the place. As the chief is the 'owner' of the land, he decides on the boundary. For the second type of disputes he also visits the place and assesses the need for land of the two parties. If both parties are in need of land he may share the land among them. All should have the same amount of land. He considers his job to be to unite the people, not to separate them.

### **The new land policy**

The introduction of Local Land Committees and Land Tribunals to deal with local land administration and land disputes that have been proposed in the new Land Bill has been discussed in a recent assembly. TA Likoswe participated in that meeting. If the Land Bill is passed in the Parliament, as a TA he will accept it but he finds it difficult. He thinks that the tribe's life will be problematic. His wife's garden will be owned by her, so the chief becomes landless. The chief may also become less able to protect the land. Land may be sold and landlessness will increase.

Children may also become landless as it may become more difficult to share the land among the children. The chief also thinks that orphans will become landless. When ownership becomes written, people can decide to sell the land and therefore become landless. The new law allows land sales. People may have to sell their land due to poverty and orphans may become like visitors. Husbands with HIV/AIDS (in need of money) may sell the land if they have a title, and therefore leave no land for their children.

### ***Group interview: Villagers***

Number of people interviewed: 13 women and 9 men, including representatives of 7 female-headed households and 1 polygamous household.

### **Village characteristics**

The village is located along newly constructed road from Blantyre to Mulanje and the people predominantly belong to the Yao, Lomwe and Mang'anja ethnic groups. The land is under customary tenure. There are no titles on any piece of land, but all parcels of land are managed and controlled by households. They practice matrilineal land inheritance. In marriage, they follow matrilocal rules where men follow and live in their wife's village. Land has traditionally been passed from mother to daughter or from family leader to female family members. Currently there is no free parcelling of land.

### **Wealth indicators**

None of the households in the village own cattle, a few own goats and chickens. Some attribute this to lack of grazing land and lack of money to buy cattle. Others attribute it to thieves that make cattle rearing a risky investment. Still a number of houses are iron roofed. Cash inflow is obtained from selling labour, and making and selling bricks. Most households are relatively poor by Malawian standards.

### **Land markets**

Land markets, though informal, are common in the form of land rentals. Land sales are not common. However, a few people have been able to buy land within the village. Land sales to people outside the village are not allowed by the Traditional Authority and hence no land in the village has been sold to people outside the village.

### **Land rentals**

Acquisition of land through land renting is very common in the area. The contracts are made between the landlord and tenant, and witnesses are brought in only when the transaction is outside their village of residence. These contracts are verbal and the chiefs are not informed about such renting in or renting out. The common renting system is fixed rent paid in cash at the beginning of the season. In some cases additional payment of part of the harvest, e.g. a bag of maize, is made after harvest by the tenant to secure the land for next season. This is not part of the contract but is made by the tenant to ensure that the landlord renews the contract. However, landlords search for tenants in most cases to obtain cash for emergencies. These include funerals, hospital bills, hunger, and school fees for children.<sup>55</sup>

The current prices for renting range from MK 850 to MK 1000 for an estimated 1 acre piece of land. These prices have been increasing in nominal prices from MK 300 in the year 2000, mainly due to increase in food prices.

### **Characteristics of landlords**

'Landlords' are in most cases poor households. They may be cash-poor as well as labour-poor, limiting their ability to generate cash income in the labour market. Due to the availability of labour market opportunities many landlords survive by renting out their land and selling their labour within and outside the village.

### **Characteristics of tenants**

'Tenants' are better off households with more labour endowment. This labour is used in own farm during the growing season and as a source of cash in dry season in off farm employment. These households sometimes rent in land to assist another household that has an emergency, hence representing a social safety net (social capital) in the community.

### **Labour markets**

Labour is available within the village during growing season and also after growing season in off farm activities, e.g. making and selling burnt bricks, and extracting and selling river sand to building contractors. By selling river sand one can make MK 150-800 in a day, while wages in agriculture, e.g. from ploughing, can give MK 1000 for men and MK 500 for women in a week.

### **Credit market**

There is no credit facility available in the area. However, the households are able to borrow money from each other in times of emergencies at no interest.

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<sup>55</sup> It appears that land rentals are distress rentals by the poor to solve immediate cash needs. The land rental market provides a temporary solution when insurance and credit markets do not work and when family networks are insufficient as a safety net. Given the contradictions compared to the statements of the TA, it would be interesting to study how widespread these distress rentals are and whether they are framed and perceived as "help" to the needy rather than as a "market" activity.

**Risk and insurance**

Renting out land is used as insurance in times of hunger and emergencies. Households owning livestock may sell livestock for cash to meet some requirements like food and hospital bills. Of late some NGOs have been providing food for work in the area. The community was asked to establish a forest nursery and plant trees in the riverbanks, which has been eroded due to the extraction of river sand. This was done as food for work. MASAF also came in and provided employment in road construction and paid the community members MK 200/day. This was part of the fertilizer subsidy programme (work-for-fertilizer) where farmers were given coupons after 10 days of work with MK 2000 cash to use to buy fertilizer.

**Land certification**

The community indicated the fear that the land will be certified under the new land policy. Some expressed fear that no men will get land, and that transfers of land will be different. They also feared that children will not inherit land as has normally been the case.

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