

**BDPA**  
CUSTOMARY LAND  
UTILISATION STUDY

BDPA in Association with AHT International

**REPORT ON THE SOCIO-ECONOMIC  
STUDY ON LAND TENURE**

A Component Study of the Customary Land  
Utilisation Study

**Lilongwe, February 1998**

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## **LIST OF ACRONYMS**

<b>ADD</b>	Agricultural Development Division
<b>ADMARC</b>	Agricultural Development and Marketing Corporation
<b>AHT</b>	AHT International GmbH Management and Engineering
<b>BDPA</b>	Bureau pour le Developpment de la Production Agricole
<b>CLUS</b>	Customary Land Utilisation Study
<b>EA</b>	Enumeration Area
<b>ELUS</b>	Estate Land Utilisation Study
<b>FAO</b>	Food and Agricultural Organisation
<b>LUCS</b>	Land Utilisation Component Study
<b>LUSC</b>	Land Utilisation Steering Committee
<b>NOIL</b>	National Oil Industries Limited
<b>NSSA</b>	National Sample Survey of Agriculture
<b>NSCM</b>	National Seed Company of Malawi
<b>NSO</b>	National Statistical Office
<b>ToR</b>	Terms of Reference

## **INTRODUCTION.**

The overall objective of the Customary Land Utilisation Study (CLUS) is to provide the Government of Malawi with reliable information on the extent, intensity and efficiency of land utilisation in this sub-sector.

In March 1995, Terms of Reference and major activities for the Customary Land Utilisation Study were prepared by the Land Utilisation Steering Committee (LUSC). They included the following activities and studies:

1. Project Initiation and Preparatory Activities
2. Land Use Study
3. NSSA<sup>1</sup> Tracer Survey
4. Socio-economic Case Studies
5. Land Allocation Study
6. Estate and Customary Land Interaction Study
7. Special Land Tenure Case Studies.
8. Completion of Phase Two and Phase Three of the Agricultural Land/Food Potential and Population/Nutrition Survey Project.

The implementation of these terms of reference was divided into three phases:

- Phase I included activities 1 and 2.
- Phase II includes activities 3 to 7.
- Phase III will include activity 8.

The first phase of the CLUS, i.e. preparatory activities and the Land Use Study, designed to provide the basic data to determine the physical utilisation of land in the customary sector, was executed by GFA in 1995/96. The specific objectives of the Land Use Study were to:

- "undertake a sample survey of the customary lands, based on aerial photographic interpretation, coupled with fieldwork, which will enable inferences and extrapolations to be made and provide information on the physical utilisation of land in the smallholder sector.
- determine the suitability of land for agricultural purposes in the sampled areas. The suitability assessment should be based on the accepted classification system currently in use in the country.
- determine the current patterns of land uses in the sampled areas and relate this to suitability. This should provide information, for example, on:
  - land suitability for cultivation which has currently been cleared or is under natural vegetation
  - extent to which suitable agricultural land has recently been cultivated
  - extent to which land unsuitable for cultivation is being utilised

<sup>1</sup>National Sample Survey of Agriculture.

- extent to which dambos have been cultivated".

The report on that phase of the Customary Land Utilisation Study (CLUS) was presented by GFA early 1997<sup>2</sup>.

The present report refers to the Phase II of the CLUS. This phase of the study covers activities 3 to 7 mentioned above, namely:

1. NSSA Tracer Survey
2. Socio-economic Study of Land Tenure
3. Estate and Customary Land Interaction Study
4. Special Land Tenure Case Studies

This Phase seeks to provide additional information to supplement the results of the previous Phase. The objectives of various activities and component studies of this Phase II of CLUS as stipulated in the terms of reference were the following:

Component	Objective
<i>NSSA Tracer Study</i>	To estimate the extent, intensity and efficiency of land utilization by smallholders in the customary areas, by determining the proportion of land cultivated, and by measuring agricultural output and productivity.
<i>Socio-economic Study of Land Tenure</i>	To develop a better understanding of the cultural, social, economic and legal processes of land allocation and alienation, and their implications for the livelihoods of smallholders.
<i>Estate and Customary Land Interaction Study</i>	To examine the changes in land use when customary land is converted to estate land, and the social and economic implications, linkages and resources flow between the two sectors.
<i>Special Land Tenure Case Studies</i>	To evaluate the suitability of land tenure systems that have been introduced on various smallholder schemes under different crop production authorities, and the level of land utilisation on these schemes.

The present report refers to the Socio-economic Study of Land Tenure.

## 1. BACKGROUND AND OBJECTIVES

<sup>2</sup> MALAWI. Land Use Component Study. Customary Land Utilisation Study. Final Report. GFA 27.02.97

## **1.1 An overview of Customary Land Tenure in Malawi**

According to Nankumba (1988) land tenure assumes that land can be held. Furthermore, land tenure implies a relationship between a person or a group of persons and a parcel of land. Tenure also has to do with the relationship between a person or a group of persons with another in relationship to land. Hence land tenure constitutes rights and obligations associated with the ownership of land.

There are basically three land tenure types in Malawi: customary, public and private (i.e., lease or freehold). The Land Act of Malawi defines customary land as, "...all land which is held, occupied or used under customary law but does not include any public land". Customary law is defined as "the customary law applicable in the area concerned". Prior to independence this land was known as Native Trust Land or African Trust Land and included all land in the Protectorate except public land, land disposed of by the Governor before 13th April, 1936, all land held on 13th April under a certificate of claim, and all land disposed of by the Governor under the Crown Lands Ordinance. This definition entrusted the authority to administer customary land in the traditional leaders (i.e., chiefs, group village headmen and village headmen) albeit in accordance with the African law and custom prevalent in their areas.

On the other hand public land was meant to be all land acquired and occupied by the Government, land in Township not in private ownership, and forest reserves, parks and game reserves. Private land was meant to be land held under a certificate of claim. Freehold or leasehold land is adjudicated through registration. Most estate land is either freehold or leasehold.

This study is concerned mainly with customary land. However, the definition of customary land means it is a residual from public and private. This means that any land not recorded as either public or private will be assumed to be customary. The effect is to exaggerate the actual area of land under customary tenure.

Traditionally the authority to allocate land in the customary system resides with the Traditional Authority but is delegated to chiefs and village headmen who are the custodians of land belonging to their villages. Land is allocated to village members according to families/lineages. But as the family grows and new households are formed, the village headman allocates land to the new family.

Again traditionally, the tenure under customary land holding has been said to be usufructuary, i.e. one has rights to use the land as long as one is a member of a community and one actually cultivates the land. The person who has the right to use the land cannot sell it. In case of prolonged absence from the community, the land can be allocated to another family by the village headman. Once land has been allocated to a family it belongs to that family and the children of the family are the rightful heirs of the land allocated to their parents.

There are variations in the inheritance patterns between the patrilineal and the matrilineal groups. In the matriarchal systems, inheritance is through the female line, i.e. children inherit property

of their mothers and/or uncles (mother's brother but not father's brother). On the other hand, among the patriarchies, children inherit their fathers' and fathers' brother's property.

In general, patrilineal systems are predominately practised between the Tumbuka and Ngoni whereas the Chewa, Mang'anja, Yao, and Lomwe are generally matrilineal systems. Most of the Ngonis in Dowa, Lilongwe, Dedza, Ntcheu and Blantyre have adopted the matrilineal system through marriage. The Tonga are a unique group in the sense that their system is a combination of the matri- and patrilineal customs.

Among the matrilineal groups there are several concepts which need to be understood in order to fully comprehend the pertinent land tenure issues. First is the concept of *ofnkhoswe*. *Nkhoswe* is the custodian or caretaker of a matrilineage called *mbumba* and is usually the eldest son in the family. *Mbumba* comprises all the women in the family and their offsprings. *Mfumakazi* is the eldest sister who must be consulted by the *nkhoswe* before any important decisions affecting the family are taken. It should be emphasised in this context that the family is a more relevant unit for decision-making than the household. Several households may be under the control of one *nkhoswe* guardian and a process of consultation must precede any decisions taken on an issue likely to affect the family members.

*Chikamwini* is an uxirilocal marriage where the household is established at the wife's home village. This system, it has been claimed, makes men's rights to land precarious. The feminine version of *chikamwini* is called *chitengwa*. This is a virilocal residence where the household unit is established at the man's home village. Research in Malawi has shown that the majority of the households among the groups in the central region practice *chitengwa* (virilocal residence) whereas those in the southern region practice *chikamwini* (uxirilocal residence). These differences in marriage systems have a bearing on the use rights and security of the land tenure as well as resource management systems. They thus have a bearing on the main purpose of Socio-economic Study of Land Tenure, namely to develop a better understanding of the cultural, social, economic and legal processes of land allocation and alienation and their implications for the livelihoods of the smallholders.

## 1.2 Research Questions and Hypotheses

In the Terms of Reference for CLUS the objective of the Socio-economic Study of Land Tenure was set as follows: "To develop a better understanding of the cultural, social, economic and legal processes of land allocation and alienation and their implications for the livelihoods of the smallholders."

At the Steering Committee Meetings held on April 29th and May 21st, 1997 some of the pertinent issues of the current debate on land reform were linked to the Terms of Reference for CLUS. Based on the TORs and the concerns of the Land Utilisation Steering Committee, the Consultant addressed two main research questions in this component study which can be spelt out as follows:

1. How does the customary system of land allocation and adjudication operate in various parts of the country? The following hypotheses were generated from this question:

- The system of customary land tenure has changed in a systematic manner over the past 20 or so years.
  - Customary land allocation systems vary with the traditions of the prominent ethnic groups, i.e. Tumbuka, Chewa, Yao and Ngoni.
  - The system of inheritance influences land availability and fragmentation
  - Land pressure and ecological degradation cause changes in the customary system of tenure.
  - Local residents and outsiders have different levels of access to land.
  - Current land allocations are adequate for smallholders subsistence requirements.
  - Much land has been converted from the customary sector to private sector.
  - An informal land market (rentals and sales) involving different players is emerging in the customary sector.
  - The emergence of land rentals and sales is transforming land allocation practices.
  - Smallholders believe the customary land tenure system is just as secure and equitable as are freehold and leasehold tenure systems
  - Customary land dwellers depend on public land for a number of resources.
  - The system of ascertaining land boundaries and ownership in the customary land tenure is deficient.
2. How do smallholders utilise the land to which they have exclusive access? This question was posed specifically to enable the consultant to do the following:
- Establish current land utilisation practices of smallholders by farming systems.
  - Establish the reasons for not using all available arable land.
  - Establish household coping strategies, including the contribution of off-farm employment and the role of seasonal migration and remittances from urban-based family members.
  - Establish changes in land utilisation over time

## **2 METHODOLOGY OF THE**

### **STUDY 2.1 Study Design**

According to the ToR for CLUS and the Technical Proposal submitted by BDPA/AHT the various component studies of CLUS were to be conducted in consecutive order, implying that the results of the Tracer Study would have been available as a basis for the final survey design of the Socio-economic Study. The idea being that any questions which cannot be answered in sufficient detail or depth in the Tracer Study could be further probed into during the subsequent Socio-economic Study. However, due to time constraints which were not foreseen at the time of drafting of the Terms of Reference a certain amount of overlap had to be introduced to meet the target of submitting the Draft Final Report before the Presidential Commission on Land Reform takes the relevant policy decisions expected for December 1997. Hence fieldwork for the Socio-economic Study commenced more or less at the same time of the commencement of the fieldwork for the Tracer Study. However, the Tracer Study team carried out the household listing ahead of the Socio-economic Study. This made it possible for the Socio-economic Study to include the sample of households in the Tracer Study in the Socio-economic study.

The Estate and Customary Land Interaction Study used a sub-sample of the Socio-economic Study. So as to make sure that the results of this important component study are available by the time the Presidential Commission on Land reviews the results of all land utilisation studies, the Consultant decided to conduct fieldwork for the Socio-economic Study and the Interaction Study simultaneously. The two component studies were implemented by the same field work personnel. This procedure has an added advantage, as it facilitated the transfer of knowledge between the two study components.

The NSSA used an ecological stratified sampling strategy in which the 600 EAs were stratified into 107 agro-ecological strata. A probability proportional to population size sampling procedure was used to select the EAs in each stratum. In the Land Use Component Study (LUCS), 147 EAs were agreed to be the sample size in advance. A two-stage sampling procedure was used. In the first place, one EA was randomly selected from each of the 107 agro-ecological strata. Secondly, to complete the sample size of 147 EAs additional 40 EAs were selected randomly with probability proportional to the number of TAs each stratum.

The sampling design in the Socio-economic Study of CLUS took into account the fact that the data collected would be subjected to mostly qualitative analysis. Little quantitative analysis would be done. However, the main objective of the sample design was to ensure representation of all the sub-populations characterised by a set of variables considered important for this study. Thus, in addition to the consideration of the agro-ecological stratification other characteristics were introduced in the stratification scheme. These characteristics were as follows: land holding size, social systems (cultural differences), farming systems (crop mixtures and livestock crop combinations), existence and extent of commercial estates, etc.

## **2.2 Sampling Frame**

The NSSA original sample of 600 EAs was supposed to be comprising rural households only. However, the basic unit of enumeration was not the smallholder farmer in the customary sector, but rather the smallholder farmer in general. Most studies using the NSSA data have safely assumed that smallholders cultivate customary land and therefore NSSA data is about customary smallholders. During the CLUS workshop, customary land was defined as all land excluding

public and private land. It is conceivable that some smallholders cultivate freehold or leasehold land. However, it is believed that the proportion of the population in this category is negligible (less than 1 percent). Hence it is prudent to adopt the NSO assumption in this study (i.e., smallholder farmers cultivate customary land).

The Land Use Component Study has pointed out several weaknesses of the NSSA sample. Of particular interest is the fact that the sampling frame excluded areas which the Physical Planning Department designated as areas for urban, commercial and administrative centres that have since experienced little growth and are, for all practical reasons, still rural. On the other hand, there are areas which have clearly experienced growth to qualify as urban/commercial centres (e.g., Kasungu) but have been included in the sampling frame. In addition, peri-urban settlements have been included as rural.

The above observations notwithstanding, for purposes of consistence and comparability the original NSSA sample of 600 EAs formed the sampling frame. However, care was taken to ensure that the anomalies observed in the NSSA sampling frame were corrected.

### **2.3 Sample Size and Procedure**

In the ToR for CLUS it was suggested that 8-16 EAs covering all ADDs be the sample size of the Socio-economic Study so as to give full coverage of the cultural, the ecological and the land holding size differences across the country. It was clear that there were differences in the distribution of the characteristics enumerated above across the country. Therefore, it was advisable that the sampling strategy took these variations into account.

To ensure a full coverage of the cultural and ecological differences the sample size was set at 320 households. This sample size is expected to give results that are significant at the regional level ( $P=0.1$ ). Rather than use the EA as a sampling unit, the household is the sampling unit. The emphasis is on ensuring that the households are adequately represented in the three regions of the country and in the main socio-ecological groups.

A random sampling system ensured that the full set of criteria was covered in each region. As the emphasis in this study is on the reliability of the information solicited from the individual respondent and/or household ample time was allocated for each interview. The number of interviews conducted in each EA averaged ten. This number is considered to be sufficient. This sampling strategy gave a total of 33 EAs to be visited. The exact distribution of the EAs was four in the Northern Region, 15 in the Central Region and 14 in the Southern Region.

During the field work, a purposive sampling strategy that ensured representation of the different social groups was applied. This ensured that the various social categories already identified (including female-headed households) were included in the sample.

A concern was raised at the workshop regarding targeting heads of households in the in-depth interviews. It was argued that this may mask the internal dynamics of the household and lead to biases in the results. For instance, there may be senior unmarried women or men living with their older sons or daughters and, on the other hand, there may be junior married sons and daughters

living with their parents or other relatives. If heads of household are targeted, such persons will be missed.

The workshop participants discussed this issue thoroughly. The participants' view was that such situations are rare and that in many cases senior and junior unmarried women and men constitute independent households and therefore would not be missed in the household listing. However, the group recommended that wherever possible interviews should be held with family/household members present. Furthermore, during the discussion at the workshop it became clear that in the Chichewa vernacular family equates to *banja* which is a matrilineage. On the other hand household more closely relates to *nyumba* which is the individual dwelling unit of the conjugal units of the *banja* matrilineage.

In order to take into account the above concerns, the in-depth interviews were held with members of a household and not members of a family in the connotation of a lineage or extended family. Furthermore, to the extent possible members of the household were encouraged to participate in the interviews.

## **2.4 Methods of Field Investigation**

The chief method of field investigation for the Socio-economic Study was qualitative in-depth interviews with household members. An average of often in-depth interviews were conducted in each EA; ranging from nine to 12 per EA. The plan was to interview the five households whose gardens were measured in the Tracer Study and seven more selected by the Socio-economic team. In many EAs this was done but in a few cases it was not possible because we did not have a list of the households from the Tracer Study. The selection of the 5-7 households was purposive and took into account the Socio-economic characteristics of age, economic and social status and gender.

In addition to the in-depth interviews, in each EA a minimum of three focus group discussions were conducted. The focus groups took into account age and gender.

No questionnaires and no standardised interview-schedules were used. However, checklists were used for the interviews. Proper and detailed training of the research assistants ensured that all items on the checklist were asked and that the authorised translations of each item were understood by all the research assistants. An important objective of this methodology was to obtain a holistic view of the households interviewed and capture the complexity of real-life experience as opposed to the practice of dissecting reality into quantifiable variables typical of the conventional sample survey approach. Land-allocation practices cannot be studied in isolation, but must be related to production decisions, to the community's entire social fabric and to the society's values. In-depth interviews also help to understand the reasoning behind respondent's behaviour and their decisions. The method's most important contribution is the well-considered interpretation of everyday life from the farmers' own point of view.

Table 2.1: Summary of EAs visited, attendance and other features.

Date of visit	Enumeration Areas (EAs)	G groups	F groups	Interviews	Attendance		Villages	Remarks on Attendance
					Male	Female		
09/09/97	Chitipa (4)	1	3	9	-	6	1	Poor
11/08/97	Karonga (9)*	1	3	12	41	33	1	Okay
13/08/97	Mzuzu (14)	1	6	10	23	23	4	Poor
14/08/97	Chindi (18)	1	3	12	35	19	2	Okay
15/08/97	Kaomba (24)*	1	4	12	25	36	2	Good
16/08/97	Dowa (28)	2	4	12	163	47	4	Excellent
18/08/97	Dowa (32)	1	4	11	35	24	4	Poor
21/08/97	Mchinji (36)	1	4	12	40	33	1	Good
22/08/97	Kabudula (60)	1	4	12	29	34	2	Cooperative
25/08/97	alili (52)	1	4	12	31	65	1	Cooperative
26/08/97	Kabudula (56)	1	4	12	77	76	1	Impressive
27/08/97	Cliadza (64)	1	4	12	54	39	2	Very good
28/08/97	Dedza (68)	1	2	12	19	25	1	Poor
29/08/97	Pemba (72)	1	2	11	25	33	1	Poor
01/09/97	KK (48)	1	4	12	37	30	1	Good
02/09/97	Salima (40)*	1	4	11	72	96	3	Excellent
05/09/97	Jalasi (87)*	1	4	12	50	97	1	Cooperative
06/09/97	Mponda (83)	1	4	11	28	80	1	Mostly women
08/09/97	Nyambi (94)	1	4	12	60	70	1	Very cooperative
10/09/97	Kawinga (97)	1	3	11	74	93	1	Very Cooperative
11/09/97	Msamala (92)	1	3	11	53	79	1	Excellent
15/09/97	Nazombe (132)	1	4	11	52	68	1	Very cooperative
17/09/97	Nchima (122)*	1	4	12	69	76	1	Serious people
18/09/97	Thyolo(127)*	1	4	12	58	69	1	A bit dull
19/09/97	Chirad(117)	1	3	11	17	45	1	Poor
20/09/97	Mabuka (137)	1	4	12	24	46	1	Good
23/09/97	Makata(112)	1	2	10	24	28	1	Poor
24/09/97	Ngabu (142)	1	3	9	35	24	1	Responsive
25/09/97	Tengani (146)	1	3	9	41	111	1	Mostly women
27/09/97	Zomba (107)	1	4	12	24	64	1	Cooperative
30/09/97	Ntcheu (44)	1	4	11	68	74	1	Very good
01/10/97	Ntcheu (80)	1	4	10	44	62	1	Good
02/10/97	Ntcheu (76)	1	4	10	93	98	1	Impressive
Totals	33	34	120	370	1520	1803	48	

\* EAs where Estate/Customary interaction study was done.

## 2.5 Data Analysis

The methods of data analysis must be commensurate with the purpose of in-depth household studies which go beyond merely ascertaining the rural people's factual behaviour. They are rather intended to unveil the meaning people attach to their behaviour. In other words, the study was to provide a thorough understanding of the perceptions of people about land tenure; in particular what their rights and obligations in relation to land are; their perceptions about security of tenure and whether or not allocation is equitable; and the relation of land allocation procedures and household coping strategies to other structures within society.

So as to achieve this purpose the fieldwork data has been analysed by means of hermeneutical interpretation. This means the field reports were interpreted within the respondents' own frame of reference. The researchers have taken care and tried to relate people's decisions and their empirically verifiable behaviour to the meaning this has within their own value system and their world view. Obviously, the analysis is mainly qualitative in character. However, some quantification has been done where data was available.

### **3. RESULTS OF THE STUDY**

#### **3.1 Adjudication and Security of Tenure**

Results from the focus group discussions revealed that in most communities across the country people are able to identify the boundaries of their villages, gardens and homesteads. The features for demarcating boundaries differ from place to place but are nonetheless very clear. These include rivers and streams, roads and paths or *ndundas*, trees, drains, bunds, hedges, etc. The common statement about land boundaries is that, "even a child is sent to the garden and he/she cannot go astray".

Interestingly, most land disputes/conflicts in the customary sector are over boundaries. This is despite the clear and conspicuous features of boundaries. This indicates a high prevalence of cases of encroachment over each others land. There is vivid evidence that conflicts over land are on the increase. However, the system of adjudication is adequate.

Insofar as land allocation and security of tenure are concerned, the information we have from both the in-depth and the focus group discussions indicate customary tenure is quite secure. Land is allocated to a family/lineage and once allocated the family heads become quasi "landowners" with powers to reallocate the land. "If the owner dies, the children take over the land... if the owner moves to another place and there are no children or relatives to take over the land, the land is left in the hands of the chief".

Table 3.1 shows mode of land acquisition by respondents. As can be seen from this table, 81 % of the respondents said they acquired their land through inheritance from parents or relatives. Only 16% of the respondents were allocated land by the village headman. The exegesis of the information in the table may be seen from two points. Firstly, the fact that persons, other than the village headman, allocate land to their children and relatives means that once land is allocated to a family, the family heads become quasi owners of that land. Secondly, this finding also implies that if there was no unallocated land available the authority of the village headman in land allocation matters would virtually disappear. The information also puts into serious question the popular belief that customary land tenure is usufructuary (i.e. one has rights to use the land as long as one is a member of a community and one actually cultivates the land) and hence insecure. What we have found is that once land has been allocated to a family/lineage, the lineage owns the land in perpetuity. This finding is in agreement with Nankumba (1988) who reported a similar observation in 1988. He noted that " under the customary rules of land tenure, families have the right of using the land allocated to -them almost in perpetuity. As in this study, Nakumba (1988) found that most people.acquired land through inheritance from parents.

Respondents corroborated this finding in their responses to the question, "Given opportunity would you convert your tenure to leasehold?" "Sindingachite lizi munda uli wangawanga." I cannot lease land that belongs to me personally. "Munda ndi wanthu tsono ndikachitlanji lizi?" The land is 'ours' so what is the point of leasing. The answers were varied but conveyed the same message. The tenure is secure as it is.

Table 3.1 Method of land acquisition

Method of Acquisition	Number of Respondents	Percentage
Inherited from parents/relatives	277	81.40%
Allocated by Village Headman	54	15.88%
Bought	1	0.29%
Other	8	2.35%
Total	340	100.00%

In the in-depth interviews five percent of the respondents have converted/alienated customary land to leasehold. This appears to be more generally the case in the Central Region than in either the Southern or Northern regions. This is most probably due to the fact that farmers in the Central Region want to have direct access to the auction holdings which until recently was possible only to farmers with leasehold titles. It may also be the impact of the *ndunda* freehold title experiment which was implemented in Lilongwe. The reasons given by the respondents for wanting to lease land include ease of access to credit, access to auction floor, getting assistance from government and to increase profits. This is further evidence that customary tenure is secure enough for most of the farmers.

Quite often, it is argued that land under customary tenure is easy prey to land grabbers. It appears that this is only true to land that is still in the custody of the village headman. Insofar as land belonging to a lineage or household is concerned, it cannot be grabbed without the consent of the owner. Such consent would be applicable in customary as well as leasehold land. In fact, one may say that poor farmers would be more prone to selling land under leasehold than under customary tenure. In other words, they are less protected (in the sense of holding on to their land) under leasehold tenure.

### 3.2 Accessibility and Equity of Tenure

In the past, a member of a community approached the village headman to be allocated land. As population increased and more land was opened for cultivation, a point was reached at which most communities had no more new land to allocate to their members. The most common statement in the focus group discussions was,

"...mostly we find land from our parents who share it to [sic] the sons and daughters. Those whose parents have no land they do buy from other villages or borrow from other people. The land we are using is the one given to us by our parents." [Focus groups throughout the country].

When a community has no more new land to allocate to its members, it may be said to have reached a saturation point. This point is a turning point in the land allocation process and in the authority of the traditional leaders to allocate land.

Land pressure has eroded the authority of the village headmen over land matters. It is difficult to pinpoint when and which communities reached the saturation point. However, in those areas where the saturation point has been reached, family heads are responsible for allocating the land to other users (be it their offsprings or relatives or friends or purchasers). In these circumstances, the authority of the village headman in land matters has been seriously eroded. Once land has been allocated to the family *ban/a* by the village headman, the tenure is quasi freehold. The interpretation of this is that customary tenure is not necessarily communal as has previously been believed. Customary tenure has inherent properties for both corporate and individual ownership. Furthermore the finding suggests that each family *ban/a* owns the piece of land allocated to them. Since the ownership is corporate in the sense that the land is shared among the lineage members (both living and nonliving) sell of land is restricted. In this sense customary land tenure is no longer truly usufructuary as has always been believed.

It is important to note that land is primarily allocated to a family *banja* and it is only in recent times that land is allocated to a household *nyumba*. This is true whether one is in a matri local or patri local area. **The head of the *banja* is a key person in matters of land allocation. Any new policy must bear this in mind.**

What is clear in the findings of this study is that the traditional system of land tenure ensures that everyone has a piece of land. Ninety-nine percent of the households own, in the corporate sense, a piece of land. Only three percent do not have a piece of land. Of those who have land, 80% inherited the land from parents, 16% were allocated the land by the village headman and less than 1% bought the land. Forty-one percent own less than a hectare, 31% between one and two hectares and 11% between two and five hectares. The rest have five or more hectares. One household reported owning as much as 14 hectares of land. Ninety-five percent of the households interviewed own land under the customary tenure system.

When we compare the responses from the matriarchal and the patriarchal systems, it is observed that there are no significant differences. In the patrilineal communities of the Tumbuka, Ngoni, Nkhonde, Sena, etc. land is passed from father to male children. It is assumed that the female children will find land through marriage. However, in case of divorce or death of the husband a woman who returns to her parents is entitled to be allocated land by the parents. A point to note about the patriarchies is that land belongs to the men. The common statement made about land ownership is,

"...(malo amakhala m'manja mwa bambo ndi ana ake wamuna) land belongs to the man or his sons but his wife is allowed to stay on the land. If the man dies

and is survived by sons the land belong to the sons. If he has no sons then his brothers take the land." [Focus groups in Mzimba].

On the other hand, among the matrilineal communities of the Chewa, Lomwe, Yao, Mang'anja, Tonga, etc. land is passed from mothers to children. There are variations between the matriarchies in the South and those in the Centre. *Chikamwini* is more evident in the South than in the Centre. Hence in the South women have power over men in matters of land and it is the responsibility of the woman to look for a piece of land when a man and a woman marry. The following statement was heard in the focus groups concerning land allocation and ownership:

".. Here land belongs to the woman because she is the one who stays at home with the parents. When she is married the husband is supposed to come and stay with the wife at her place.. Here in the Southern Region we prefer boys to girls because we parents don't have to worry about where we will get land to give the children. The boys find land where they marry." [*Chikamwini*].

On the other hand, *chitengwa* is more common in the Centre than in the South. From the Tracer Study we observe that 92 % of the marriages are based on dowry and virilocal in residence. In the Central Region only 12% of the marriages are based on dowry but 52% of them are *chitengwa* virilocal in residence. On the other hand, in the Southern Region 15 % are dowry marriages and 44% are in *chitengwa* virilocal residence. In *chitengwa* it is the man who take the responsibility of looking for a piece of land for the household. The pattern of land rights in Central Region was captured eloquently by the following statement:

"...Authority over land is in the hands of the husband because the wife only marries in the village and stays in *chitengwa* in that village. In the case of a woman who comes back from marriage (*chitengwa*) she has rights to her mother's land. The man in *chikamwini* finds land where he marries. He will ask his mother-in-law to find a garden for him. It is the mother-in-law's responsibility to find a garden for the son-in-law *mkamwini*."

All the same, the system of tenure is egalitarian in the sense of assuring every member a piece of land. This does not mean that land is allocated in equal amounts to every member. On the contrary, we find a great deal of heterogeneity in landholding sizes throughout the country. There are areas where households have no piece of land. There is evidence in the statements from the focus group discussion:

"...There are many people who have no land and rely on borrowing. Sometimes the owners forcibly take back land after a year's cultivation. There have also been cases of withdrawal of right of use when the borrower has just planted. Payment for borrowed land is usually in kind but cash is also commonly demanded."

It has been argued that the marriage system affects agricultural development. In the *chikamwini* system, for instance, it is argued that men do not invest in land improvement because of fear that their in-laws may one day chase them. The evidence in this study does not support this hypothesis. While it is true that the situation of men in *chikamwini* uxirilocal families is

nebulous, there does not appear to be any relationship between the marriage type and improvements made on the land. As a matter of fact, in the south where *chikamwini* is most resented by men, there is just as much improvement on land as anywhere in the country. Of 354 respondents, 109 (30%) said they had made improvements on the land. Most of the improvements involved woodlots plantation while a few involved drainage systems and terraces. These were spread evenly throughout the country.

The explanation for this may lie in the fact that, even in the *chikamwini* type of marriage land belongs to a lineage normally headed by a man. It is the innovativeness of this lineage head that normally makes a difference in what is done on the land.

### **3.3 Land Pressure and Fragmentation of Holdings**

The egalitarianism referred to in the previous section is only evident at the community level. Local residents and outsiders have different levels of access to land and other resources. Customary land allocation systems give priority to members of a community when allocating land. Outsiders are considered as a second priority and when all members have their land requirements satisfied.

There is some indirect evidence in support of this. Of the 354 households interviewed 83 % have land within their own communities and only 17% have access to land outside their community. This rule however only applies only to arable land. When it comes to grazing land, the rules are more flexible and permissive. In many communities grazing land is accessible to all with livestock in the area. Only a few communities reported restrictions to grazing land.

Most of the land holdings (45%) have remained the same over the past 20 years. On the other hand quite a large proportion of the households (37%) reported decrease in holding sizes. The major reason for change in size of holding is reallocation to relatives and children. A few households have experienced a decrease in land holding size due to expansion of a graveyard or construction of a road or loss of fertility due to erosion or long use. A few reported turning their land into grazing area. There are also a few cases of loss of land due to encroachment by other village members. There is evidence that land pressure is quickly making some households landless or near landless.

Land pressure is also changing the social structure in at least two ways. In the first place and in the Southern Region in particular, young women are more readily allowed to go into *chitengwa* marriage. This is going to affect the configuration of households. Whereas previously *chikamwini* was prevalent in the south, now this is changing. Secondly, due to the land pressure, a great deal of the younger generation appears to migrate to other areas in search of land for settlement. In Mulanje and Thyolo, some are migrating back to Mozambique where they have relatives. Others migrate into town or to the Central and Northern Regions or to some other districts within the Southern region such as Machinga. These movements will affect the ethnic, age and sex distribution of the population in both the destination areas and where the movement is originated from. The Tracer Study shows that the Southern region has more female headed households in general. This may be a result of the land pressure.

This raises the question of whether land reform is an adequate long term solution to the agrarian problem. The evidence shows that, at least in the southern region, land redistribution or restitution will only deal with the problem in the short run. First, it ought to be recognised that **land pressure is a highly localised phenomenon**, being acute in some areas and less so in others. This is true even in the Central and Northern regions. In the Southern Region for instance, land shortages appear to be acute in Chiradsulu, Mulanje, Thyolo and Zomba. Given the size of the estates and the human population in these districts, redistribution of land would only satisfy the current land requirements. In five to ten years there would be no more land to redistribute. In those areas where estates displaced people and compensation was inadequate, restitution may be imperative. However, restitution does not deal with the problem the people are confronted with now which is that they have no land to cultivate and make a living. In the long run therefore there is a need to be prepared to deal with a landless labouring category of people which is definitely in the making. A more permanent solution to this problem, such as creation of jobs through stimulation of small-medium scale enterprises, is urgently needed.

Two questions are usually raised when the issue of land pressure is discussed. The first relates to the apparent abundance of unallocated land in all regions of the country. For instance, the photo interpretation component of the Tracer Study estimates that 6.237 million hectares to be available in the customary sector. Out of this area, 4.30 million hectares are considered suitable for cultivation. The household survey of the Tracer Study estimates that 2.39 million hectares are allocated for cultivation. The implication is that there is about 1.95 million hectares of suitable land still not allocated. The question is where is this 1.95 million hectares and why is this land not allocated.

No attempt is made here to answer this question since this study was confined to cultivated land. However, one possible explanation may be that the estimate of 6.237 million hectares may be an over estimate. There is evidence of overestimation in both Mkandawire et al. study of estate expansion and the Tracer Study. Mkandawire et al., using data from leasehold files from Kasungu, Mzuzu, Salima, Lilongwe, Liwonde and Blantyre ADDs reported that from 1980 to 1989, 13,250 new estates were established totalling 503,200 hectares. The average size of these leases was 37.98 hectares. In the Estate Land Utilisation Study (ELUS), it has been estimated that there are 22,419 to 35,689 leasehold or freehold estates, covering a total area of between 615,419 to 1,217,858 hectares, 88% of which are less than 40 hectares in size (Steele, 1995).

The primary modes of estate development during this period were: i) conversion of cultivated customary land into leaseholds; ii) opening new estates in virgin customary land by former managers, tenants, clerks or other employees of the large-scale corporations, medium level civil servants (e.g. teachers, agricultural officers) and small businessmen such as shopkeepers (Mkandawire et al., 1990).

[The major characteristic of these estates is that a good percent of them were opened in less (accessible and less arable areas. They tended to be of low capital investment and owner managed. Some of these estates are dormant or abandoned. The ELUS study found that up to '1 percent of the estates in Malawi are abandoned due to lack of capital, land disputes, illness or ideath of owner, poor access and obtaining the estate only for its burley tobacco quota (Mapemba, 1997).

Mkandawire et al. sample of estates, on average indicated that only approximately 26% of the land was under crops. About 1 percent was cultivated by encroachers, 18.5 percent was under woodland, 2.6 percent was grazing area, 11.8 percent fallow and 7.5 percent was for buildings and roads. The rest (31.8%) was waterways, wasteland and other non arable land. In summary, 47.2% of the land is used for cultivation and buildings and roads. On the other hand, 52.8 percent is for grazing, woodland and wasteland.

Several lessons may be drawn from this data. First is that a large area of customary land has been alienated to the private sector. It should be appreciated that this land exists side by side with customary land and, in many cases, looks like customary land. It is therefore probable that the photo interpretations classify this land as customary thereby exaggerating the area belonging to the customary sector. Secondly, if the land use pattern in the leasehold sector is anything to go by, what it reveals is that waterways, wasteland and other non arable land comprise a large proportion of the total land area (32%). This land is not available for allocation because it is not suitable. Thirdly, the high percent of woodland may in fact be land that was under settlement and cultivation but due to degradation is now under long term fallow and is grown with woody vegetation. It could also be land that is in a rain shadow area prone to drought.

Lastly, it should also be recalled that customary land is defined as a residual from public, leasehold and freehold land. This means that any land not recorded in the public or private sector will automatically be assumed to be customary. This is clearly a source of error, especially when we recognise that land registration records are incomplete and that small to medium estates owners tend to cheat on the actual size of their estates to evade higher land rent charges. This error contributes to the overestimation of the customary land.

In conclusion, we strongly suspect that a good proportion of the 1.95 million hectares of the so called unallocated land is actually unsuitable land or suitable but under leasehold. In either case, it is not available for allocation by the village headman. For the development tourist, evidence of this is found as one drives from Lilongwe to Blantyre whether via Zalewa road or Zomba. However, for the field work team of this study, such pieces of land were easily observed in the many remote areas visited away from the main highways.

In the Southern Region, a lot of wasteland was observed around the Lake Chilwa basin in Zomba, Chiradzulu and Phalombe and along the Shire River valley in Chikwawa and Nsanje. Woody areas were easily discernible in the Shire Highlands, the area around Chileka and Nkula, in parts of Nsanje, Chikwawa, Mwanza, Machinga and Mangochi. The study team is convinced that there is lots of unsuitable land which may have been classified as suitable.

In the Central Region, the situation is the same. Ntcheu, Dedza, Lilongwe East, Dowa East, Ntchisi, Salima and Nkhotakota all have rocky woodlands which are unsuitable for cultivation. Along the Lakeshore in Dedza, Salima and Nkhotakota, a lot of wetlands can be seen but they are virtually unsuitable for cultivation due to water logging. Lilongwe West, Mchinji and Kasungu also suffer from wetlands such as the Dyamphwe, Bua, Rukwa and Dwangwa river systems.

The second question relates to land that is already allocated but not being cultivated. The data from the Tracer Study indicates that of the 2.39 million hectares allocated 1.99 million hectares (83%) is cultivated and the rest is fallow (7%) and settlements and other uses. Our in-depth interviews corroborate this finding. About 27 % of the respondents reported abandoning land and not cultivating it. This may be the land referred to as fallow in the Tracer Study. The reasons for abandonment of land include loss of fertility (due to witch weed infestation, erosion, floods), land too small, emigration, disputes over the land, labour constraints, fallow, lack of seed and laziness. The amount of land abandoned range from half a hectare to as much as 11 hectares. The uncultivated allocated land is therefore fully accounted for.

### 3.4 The Development of Informal Land Market

Table 3.3 below is constructed from the in-depth interviews. The evidence from the in-depth interviews shows that a substantial number of people (22%) regularly rent a piece of land for cultivation every year. The sole reason for renting is shortage of own land. A majority of the people who rent do so from relatives and friends.

On the other hand, 10% of the respondents reported renting out land to relatives and friends. The people who let out land did so because they had enough to let out and not primarily for money. However, it would appear that a lot of people look for land to rent but do not find it. This is evidenced by the reasons given for not renting land. In addition, the Tracer Study found that the extent of borrowing was 6% in the North, 23% in the Centre and 30% in the South. The overall percentage was 23 %.

A substantial number of those who said did not rent, gave shortage of land as the reason for not renting. What is most interesting is that virtually all the rents are on cash basis. The payments range from as low as K10 per hectare to K300 per hectare per year. It is clear from these data that an informal land market (rentals and sales) involving different players is emerging in the customary sector.

Table 3.2 Extent of renting and letting out land in the customary sector

N=286	Extent of Renting	Extent of Letting Out
Yes	22%	10%
No	78%	90%
Total	100%	100

In terms of land sales, less than 1 % reported to have ever sold land and it was because they had enough land to sell and they were asked to sell. Again this is an indication of a land market emerging. The question that may be asked is this. How come the extent of land sells is so low? There are two possible explanations to this. The first is that people are not selling land because they themselves do not have enough for cultivation. But a more probable reason is that the corporate ownership restricts land selling since land is associated with the survival of the lineage

and land appears to be the sole source of a livelihood for many. The implication is that as long as land is the sole source of livelihood, land sales will be limited to those areas where there is extreme pressure. On the other hand, if alternative sources of livelihoods were available more land would be available for sale.

Land pressure also creates conditions for private ownership of land. Pressure on land is more serious in the Southern Region than the other two regions. There are cases in the Southern Region whereby each person is forced to obtain resources such as thatch grass and firewood from his/her own piece of land. This is not very common in the other two regions. This is another step towards private ownership of land and is a direct consequence of land pressure. **It can be predicted that as land pressure increases the customary land tenure system gives way to private tenure.**

### 3.5 Land and Other Resource Utilisation and Management

During the field work, discussions were held with groups to find out how land and other resources are used in the customary sector. In general land may be divided into four categories: settlement land, land for cultivation, grazing land and land reserved as graveyard. In the Centre and the South most of the land is taken up by gardens and settlements and it was observed that in many communities there are no unallocated land reserves except for the non-suitable land. From the Tracer Study, gardens take up 47%, 85% and 78% in the North, Centre and South, respectively. It would appear that settlements take up more land in the South because of high population density.

However, individual woodlots are quite common. On the other hand in all the four EAs visited in the Northern Region (i.e. Chisenga [Chitipa], Fulirwa [Karonga], Sonda [Mzuzu], and Kakombwe [T.A. Chindi]) unallocated community land is still available. In these areas the domination of gardens and settlements is not as vivid as in the other areas visited.

Groups were specifically asked to discuss the various uses of the land resources. For the land that is allocated all is under cultivation and settlements. For the communal land the following are the commonly mentioned types of uses: source of firewood, building materials, herbal medicines, wind break and shade, timber for furniture, wood for curing tobacco and baking bricks, fruits, wood for making curios, beehives, and control of soil erosion. It appears that unlike the arable land communal land is accessible to all communities surrounding the land resource. There are no outsiders and insiders as is the case in the arable land. For instance, in dealing with grazing land, the rules are more flexible and permissive. In many communities grazing land is accessible to all with livestock in the area. This is true even if grazing in the gardens. Everyone is allowed to graze as long as there are not crops in the gardens. Only a few communities reported restrictions to grazing land.

Water and forestry resources are subject to similar control and management systems as grazing land. In areas where there are community boreholes and gravity water projects, there are water committees responsible for water administration. However, there are no restrictions of access except rules of proper use of the resource. In some areas a small fee is charged for the use of water. With regard to forestry resources such as trees there are rules prohibiting careless cutting

down of trees, cutting of trees at the graveyard and many cases permission must be given by the village headman before trees are cut.

However, the resources are in general open to every member in the community and there is multiple use of land resources. This is why it is difficult at times to talk about efficiency in this type of tenure. **Hence caution must be exercised in the formulation of any policy that would convert land rights into private ownership and effectively alienate the resources from the rest of the community members.** The consequences of such a policy on community structure and relations and management of the resources must be carefully considered.

### **3.6 Conflicts and Conflict Management in the Customary Sector**

The development of commercial farms, commonly known as estates, in Malawi dates back to the period of the early missionaries in the later part of the 19<sup>th</sup> century. According to Christiansen and Kydd (1987), the first estates were for coffee production. Due to the collapse of the price of coffee on the world market, the settlers turned to cotton, tobacco and tea. But until the 1920s, estates development was slow. More expansive estate development occurred during the 1920s when the colonial government started to issue legal titles to land in order to stimulate further European settlement in the colony and to generate revenue for the administration of the Protectorate (Mkandawire et al., 1990).

By 1930, a total of 126,306 hectares of land had been alienated. According to Pachai (1978), 78,329 hectares of this had been alienated in freehold and 47,977 hectares in leasehold, almost all to Europeans. European alienation of land was most extensive in the Southern Region, where large estates (commercial farms) were developed to produce tea and flue-cured tobacco. One individual estate, that of the Blantyre and East Africa Company, covered more than 50,000 hectares (Mkandawire et al., 1990).

The stories from the focus group discussions corroborate the historical records. From the focus group discussions, people narrated that lots of land was alienated from customary to leasehold tenure. In the southern region two waves of land alienation could be identified by the communities. The first and may be the most extensive land alienation occurred towards the end of the World War I. In the narratives of the focus groups this period is associated with the Chilembwe Uprising of 1915. After the war many a European moved in the areas of Thyolo and Mulanje to establish commercial tea estates. "There was plenty of land then and our forefathers gave the Europeans land in vast quantities without thinking of the future." This is typical of the estates that were created in the 1920s to 1930s. Chiefs gave away land to commercial farmers without regard for future land requirements of their communities.

Large-scale land alienation in the Southern Region, together with a substantial immigration of the Lomwe people from Mozambique<sup>3</sup> in the early 1900s, resulted in scarcity of land within the

<sup>3</sup>The influx of the Lomwe from Mozambique in the 1900s, was to a large extent, also influenced by the establishment of the estates. The estates, therefore, also contributed to the rapid population growth in the Southern Region.

African Trust Land<sup>4</sup> areas or customary sector. Major conflicts over land between European estate owners and smallholder encroachers started. The system of *thangata* developed in response to these land conflicts.

We observe that, from both the historical records and the narratives of the focus groups, many communities are experiencing land pressure due to mainly three reasons: expansion of the estate sub-sector, declaration of public land (e.g., creation of Government game parks and forestry reserves) and population growth. This was the message in the in-depth interviews and the focus group discussions as can be deciphered from the following statements:

"...There is no land currently available for allocation within the community but there is a Government forestry reserve which is unallocated....The land size has not changed but due to population increase the land is not available...Conflicts over land are numerous, especially during the rainy season because there are too many people but there is no more land to allocate to them...Yes there are a lot of landless people here and some of the reasons are that we are multiplying too fast...We are not happy with the estate because they have taken part of our land and left us with less land...We were not consulted when the estate was being established...They took our land during the time of the Malawi Congress Party when people like us had no say..."

A second wave of conversion of land from customary to private sector seems to have started in the late 1960s and reached a peak in the 1980s. This wave seems to have affected the Central and Northern Regions more than the Southern Region. In the focus groups in Kasungu, Dowa, Salima, Lilongwe and Mchinji respondents recalled when they had plenty of land prior to Independence and how the estates started coming in. In Kasungu (Mbuzi), Salima (Tembwe), Mulanje (Njeza) and Thyolo (Nkolokosa) communities had lost land to estates during this period. Now they have no more land available for their children. The data from Mkandawire et al. (1990) lends support to the claims made by the focus group discussions.

Land pressure has contributed to the decline in soil fertility. Ninety percent of the households reported decrease in crop yields. The reasons for the decrease are withdrawal of credit, inadequate inputs, high input prices and soil infertility. Sixty-one percent of the respondents gave these reasons. The other reasons given were climatic changes, pests and diseases and poor cultivation methods. The high incidence of low soil fertility is primarily due to cultivation of the same piece of land over a long period.

<sup>4</sup>In the colonial era, land not privately owned by individuals or companies was declared to be either Crown Land or African Trust Land. Crown Land was defined as "all public lands in the Protectorate which are subject to the control of His Majesty by virtue of any Treaty, Convention or Agreement and all lands which shall have been acquired by His Majesty for the public service or otherwise howsoever". On the other hand, African Trust Land was designated as all other land that was under customary occupation and controlled by a village headman or chief for a given area (Pachai, 1978). Crown Land is what is public land now whereas Africa Trust Land is what we now call customary land.

The result of all this is that conflicts over land and other landed resources have been on the increase. Focus group after focus group, the same statement was repeated concerning land shortage, "These days conflicts concerning land are numerous because of shortage of land." The conflicts are predominantly to do with encroachment and livestock grazing in fields of crops. Sometimes the conflicts are between communities and estate owners such as the cases of Mbuzi village in Kasungu and Nkolokosa village in Thyolo. Conflicts were also recorded over women scrambling for water. There are also conflicts arising from economic problems such as failure to pay for a borrowed land and social conflicts such as eloping and promiscuity.

Thirty percent of the respondents reported having been involved in a conflict over land. The commonly encountered types of conflicts are the following:

- Family dispute over a piece of land (12 cases reported)
- Conflicts over boundaries due to encroachment (51 cases reported)
- Conflicts related to livestock (13 cases reported)
- Conflicts over field/garden resources (4 cases)
- Encroachment by estates (1 case)
- Theft of a piece of land (4 cases)
- Conflicts between two communities due to encroachment (2 cases)

Most of these conflicts are short term lasting from a few weeks to about one month. Effectively, there are three levels of conflict resolution in the customary sector. Uncontroversial disputes are usually discussed between the aggrieved parties and settled. More serious cases are by arbitration by family members. If the conflict cannot be resolved within the family, the village headman is called in to intervene. Of the 94 conflicts reported in this study, 13 were "...discussed among ourselves...", eight "... we settled the dispute at family level, 43 were resolved by the village headman, one was referred to the Traditional Authority and the rest were not yet resolved."

This suggests that the traditional system of conflict management and resolution may be quite effective and efficient. It offers an alternative and effective channel for conflict management and resolution quite different from the modern court system. The resolutions coming out of the system have resulted surrender of encroached land, re-allocation of land, sharing of land, and re-demarcation of boundaries. In three cases land was abandoned for fear of witchcraft and in one case land is still being cultivated by the original owner but with fear. On the whole however the system is effective.

### **3.7 Crop Production and Other Copping Strategies**

Different farming systems can be found within the customary sector of Malawian agriculture. Various attempts have been made by different researchers to identify the major farming systems in the country. Usually their classification is based on fieldwork carried out in a region or area of limited geographical extent. The agro-economic studies conducted in the border zone of Nyika National Park and Vwaza Marsh Game Reserve in 1994 and 1995 represent such an attempt (AHT/GIBB: Feasibility Study on the Sustainable Management of Nyika National Park and Vwaza Marsh Game Reserve, 1995). Though fieldwork for that study was only done in specific

areas in the north of the country, it is felt that the resultant categories are applicable to the study of rural households in other parts of the country as well. In the Tracer Study these farm models have been empirically tested.

In this component we are only looking at cropping patterns to determine crops grown and whether or not the farmers are market oriented. Table 3.3 below is a record of crops grown by the smallholder farmers interviewed and how these crops are utilised in the household. From this table what stands out is the predominance of maize as a food crop. Ninety-nine percent of the respondents grow maize and 71 % use it mostly for home consumption. Another striking feature is the small proportion of farmers growing crops that are solely for the market. As can be observed from Table 3.3, tobacco, tea and cotton are the crops primarily grown for cash. However, the percentage of the farmers growing these cash crops is very small: 23%, 12% and less than one percent for tobacco, cotton and tea respectively. Some crops are grown for both home consumption and for the market for example maize, bananas, sweet-potato, rice and groundnut. The results of the Tracer Study indicate that households in the Northern and Central Regions seem to be more specialised towards market production than households in the Southern Region.

Table 3.3: Crops Grown by Smallholder Farmers and their Uses

Crops Grown	% Farmers Growing	Uses of Crops Grown (% of respondents involved)				Type of Market		
		Consumption	Barter	Gift	Sale	A	B	C
Maize	99	71	2	17	6	1	1	1
Rice	7	75	0	4	54		1	1
Millet	7	60	4	0	4			1
Sorghum	9	62	0	0	3			1
Cassava	16	40	4	4	14	1		1
Sweet-potato	12	46	5	0	37			1
Irish potato	1	25	25	0	25			1
Groundnut	48	60	2	8	20		1	
Beans	23	50	0	6	22		1	1
Cowpeas	6	52	0	0	4			1
Soya beans	8	28	3	0	34			1
Bambara beans	4	54	0	23	0			1
Pigeon peas	18	52	0	0	3			1
Peas	2	33	0	0	33			1
Nseula	3	64	0	0	9			1
Tobacco	23	0	0	0	100		1	1
Tea	-	0	0	0	100		1	
Cotton	12	0	0	0	100		1	1
Sugarcane	3	11	0	0	33	1		1
Banana	5	42	0	0	57		1	1
Pumpkin	2	28	0	0	28			1
Pepper	-	0	100	0	0			1
Vegetables	3	10	0	0	20	1		1

Key to types of markets: A = Friends and relatives within community; B = ADMRC, NOIL, Factory, Auction Floor, NSCM and Indian traders; and C = Local market and Traders

The second crop after maize is groundnut grown by 48% of the respondents, followed by beans and tobacco (23%), pigeon peas (18%), cassava (16%), sweet potato and cotton (12%). Maize is grown predominantly for home consumption. Only six percent of the respondents reported sales of maize. What is evident from the table is that **subsistence cropping dominates the customary sector**.

However, the rural households engage in other means of making a life than crop production. Twenty-four percent are involved in casual labour *ganyu*. About 49 percent of the respondents are engaged in various IGAs such as knitting, carving, tinsmith, brick making, beer brewing, pottery, bicycle repair, carpentry and trading in various items. Eighty percent keep livestock, mostly chickens and goats. This is in agreement with the Tracer Study whose findings show that 78%, 73% and 64% of the farmers in the North, Centre and South, respectively, keep some type of livestock. On average, about 70% of the households keep one or more types of livestock nationwide.

About two thirds of the respondents keep these livestock for home consumption and the others sell. Thirty-five percent get remittances from children and other relatives in towns. Remittances are mostly in cash, clothes and food.

What these data tell us is that due to the land pressure, a good percent of the smallholder are diversifying their subsistence strategies into non traditional areas. A good number of them are offering their labour for cash. There appears to be a strong linkage between the urban dwellers and the rural households. The urban dwellers are making sizeable investments in the rural areas in terms of fertilizer, seed and cash remittances. This investment may be an indication that there is a reverse flow of resources, especially agricultural produce, from the rural to the urban.

### **3.8. Legal Implication of the Findings of the Socio-economic Study on Land tenure.**

Land is quite a sensitive issue in Malawi both socially and politically. All land matters are inherently enshrined within the legal framework in Malawi. This is why quite often land disputes, especially those involving leasehold land, must be resolved in court. Unfortunately, most rural people find the modern court system both unjust and intimidating. They thus are not willing and cannot afford to take land disputes to court. It is therefore necessary to find a way of reconciling the two legal frameworks: the customary law and the western law.

#### **3.8.1 Adjudication and Security of Tenure**

It has been seen that most land disputes are over boundaries. Furthermore, there is a tendency for decisions made by traditional authorities over these disputes not to be respected by the parties concerned. They thus tend to appeal to a new District Commissioner after the one who was involved in the case has been transferred to another place.

Government should consider establishing Land Tribunals whose judgments should carry penalties if ignored.

While it is conceded that customary tenure is secure strangers to a village cannot feel as secure as the family members of the village or clan members of the village. Indeed such people can only feel secure after spending a reasonable number of years in the concerned village. It appears that customary law has some notion of lease albeit not in the western sense. It would be interesting to see if this cannot be codified in our law books.

If customary tenure is recognised as such, and its boundaries definite, why is it that it is not registered as such in respect of individuals? The fact that the findings suggest that each family *banja* owns the piece of land allocated to them and that the ownership is corporate in the sense that it is shared among lineage members (living and dead) should not per se be a reason for non registration in favour of individual members. However this notion is negated by the following finding that:

"There have been cases of withdrawal of right of use when the borrower of a piece of land has just planted." This is the more reason why codification is necessary. Again this is evidence of rentals in the customary sense. The only problem is that the borrower is not protected.

The new constitution however provides for the abolition of all cultural practices that are abhorrent to natural justices. Such retrogressive behaviour can therefore be challenged in courts.

### **3.8.2 The Development of Informal Land Markets**

It is not clear whether the informal land transaction that occur in the Customary Land Sector are recognised within the customary Law setting. However as far as the High Court System is concerned such transactions can be recognised. The new constitution specifically provides that all traditional customs and practices that are abhorrent to natural justice should be abolished. Under the High Court system therefore we have no choice but to abide by the terms of the informal agreements and this appears to be acceptable in the customary law as evidenced by the settlement of such disputes.

### **3.8.3 Accessibility through Inheritance**

One of the problems that is common to all jurisdictions is the enforcement of some particular laws. Drink and driving in Malawi is one such law which is not usually enforced. The other law is to do with inheritance of customary land. Section 3 of the Will and Inheritance Act Chapter 10:02 of the Laws of Malawi provides that:

"Except as provided in this Act, no person shall be entitled, under customary law to take by inheritance any of the property to which a deceased person was entitled at the date of his death"

Again Section 61 of the said Act provides that:

"Where all the new relatives of a deceased person who are not minors agree on the manner of distribution and administration of a small estate they may proceed in accordance with such agreement.

Provide that, "This section shall not apply to the distribution or administration of private land or institutional money"

The conclusion that can be made from the foregoing is that the customary law relating to inheritance of property (movable or immovable) has been changed.

The new relatives of a deceased person who are not minors may decide to disregard customary law when sharing the property (movable or immovable) of a deceased person. It would appear then that no one would challenge in courts of law the distribution of customary land in disregard of customary law as long as the group agreeing to such distribution meets the legal requirements.

Does this mean disrespect for customary law in favour of western law? Certainly not. Customary law is not always just. An unreported case of a Mr. Young Nyirongo against Mrs Nyirongo illustrates the point. Mr. Young Nyirongo from Mzimba divorced his first wife with whom he had several sons and one being the eldest. He then married a South African woman whom he included as joint lessees in respect of only one of his farms. When Mr. Nyirongo died all his other property went to his sons and relatives. By operation of the law the farm that he registered as private land in the joint names of himself and his South African wife vested in the latter. Young Nyirongo on behalf of his brothers and relatives could not however accept that position and claimed unsuccessfully that under customary law the farm had to vest in him.

However the reality of the matter is that the law is hardly respected in matters of inheritance and the current Wills and Inheritance Act is being amended to ensure that the victims who are usually women and children are protected. In this regard the findings of the oral hearings of the Presidential Commission of Inquiry on Land Policy Reform although coming much later than the amendment should be taken on board before the final enactment of the new Wills and Inheritance Act.

#### **3.8.4 Land and other Resource Utilisation and Management**

In many communities grazing land is accessible to all with livestock in the areas. Everyone is allowed to graze even in the gardens as long as there are no crops. Water and forestry resources are subject to similar controls and management as grazing land. The new Forestry Bill provides for the participation of the communities in the management of natural resources and at the same time seeks to privatize the said management.

In the latter case it would be ideal for the rights of the communities in the use of the natural resources to be given legal recognition in view of the fact that the said resources are in general open to every member in the community and there is multiple use of the resources.

#### **3.8.5 Conflicts and Conflict Management in the Customary Sector**

Much land has been converted from the customary to the private tenure. According to focus group discussions lots of land was alienated from customary to be private tenure. In the Southern Region two waves of land alienation could be identified by the communities. The first and most extensive occurred towards the end of the World War 1. This period is associated with the

Chilembwe Uprising of 1915. In the narratives of the focus groups after the War many a European moved in the areas of Thyolo and Mulanje to establish commercial farming estates.

However, according to Michnel Wilkinson, in Land Transactions in Malawi Law Practice Series No. 2, the origins of private land in Malawi started in the 19<sup>th</sup> Century. Between 1878 and early 1890, about one-half of the Shire Highlands was alienated or purchased from local chiefs under titles confirmed by certificates of claim, that is freehold title. The second wave began when Nyasaland became a protectorate. The government in the early days of the protectorate leased land for up to 99 years, thereby creating more private land. This wave can be linked to the Chilembwe Uprising.

The third wave of conversion of land from customary to private sector seems to have started in the late 1960's and reached peak in the 1970s and affected the Central and Northern Regions.

The fact that thirty percent of the respondents reported having been involved in conflict over land underscores the need for special courts to resolve land conflicts. The traditional system of conflict management and resolution may offer an alternative and efficient channel for conflict management and resolution quite different from the modern Court system.

However since the village headmen and traditional authorities are no longer considered the custodian of customary land on behalf of their subjects and in fact are interested parties over some disputes, in so far as their consent is necessary before conversion of customary land to private land. The present system of requiring only the village headmen's or chiefs' consent may have to be reviewed in favour of a more transparent one. Appeals however, until recently lay to the Tradition Court system which are currently under abolition. There is therefore a need for the creation of another body to fill the vacuum being created by the Traditional Court.

#### **4. CONCLUSIONS**

Drawing on the Terms of Reference for Customary Land Utilisation Study and the comments from the Land Utilisation Steering Committee the objective of the Socio-economic Study of Land Tenure was to develop a better understanding of the cultural, social, economic and legal processes of land allocation and alienation, and their implications for the livelihoods of the smallholders.

There were two main questions that were addressed in an attempt to achieve the objective of this component of the study. The first was on how the customary system of land allocation and adjudication operates in various parts of the country. The second main question was aimed at obtaining information on how smallholders utilise the land to which they have exclusive access. In this concluding section, we address the specific questions relating to the two main questions.

##### **4.1 What changes of the customary system of land allocation have occurred over time?**

There are four issues that stand out in this study concerning land allocation. These are method of allocation, fairness of allocation, security of tenure and inheritance. Land used to be allocated by the village headman to a family/lineage and once allocated the family heads became

quasi "landowners" with powers to reallocate the land. The major change that has occurred in the allocation of land is that as virgin land has become more scarce the authority in land allocation has moved from the village headman to the family heads. In areas where there is no more virgin land, this has seriously weakened the powers of the village headman. However, except for a few areas in the Southern Region, within the family/lineage, authority over land lies with the men.

In terms of fairness of the allocation system, the finding of this study is that the traditional system of land allocation ensures that everyone has a piece of land. Ninety-nine percent of the households own, in the corporate sense, a piece of land. From this angle one can say the system is fair. As a matter of fact, fairness is one of the reasons why many people said they would like the village headman to still play a role in land matters. However, as family/lineage heads take a central role in land allocation, the system closely resembles a market economy system.

The third issue is security of tenure. Contrary to the popular belief that customary land tenure is usufructuary (i.e. one has rights to use the land as long as one is a member of a community and one actually cultivates the land) and hence insecure, what we have found is that once land has been allocated by the chief to a family/lineage, the lineage owns the land in perpetuity.

Lastly, insofar as inheritance is concerned, in the majority of the cases, land is passed from parents to children. Among the patrilineal groups, male children are favoured to female children. The opposite is true in the matriarchies. However, the trend appears to be towards more preference for children in general regardless of sex. The domination of the uncle among the matriarchies or the brother among the patriarchies is slowly disappearing.

#### **4.2 Are there variations in the system of land allocation based on marriage system?**

When we compare the responses from the matriarchal and the patriarchal systems, it is observed that there are no significant differences in allocation of land. In the patrilineal communities of the Tumbuka, Ngoni, Nkhonde, Sena, etc. land is passed from father to male children. It is assumed that the female children will find land through marriage. However, in case of divorce or death of the husband a woman who returns to her parents is entitled to be allocated land by the parents.

On the other hand, among the matrilineal communities of the Chewa, Lomwe, Yao, Mang'anja, Tonga, etc. land is passed from mothers to children. Even though in the South women have power over men in matters of land and it is the responsibility of the woman to look for a piece of land when a man and a woman marry, it is the brother of the woman who controls everything. In both of the marriage systems, therefore, men control land matters.

#### **4.3 What is the efficacy of the traditional land adjudication system?**

It has been argued that in the customary sector in Malawi, it is difficult to tell which piece of land belongs to whom. Results from the focus group discussions revealed that in most communities across the country people are able to identify the boundaries of their villages, gardens and homesteads. The features for demarcating boundaries differ from place to place but are

nonetheless very clear. These include rivers and streams, roads and paths or *ndundas*, trees, drains, bunds, hedges, etc. The adjudication system is therefore quite adequate.

#### **4.4 Is the traditional land allocation system adequate in relation to smallholders' subsistence requirements?**

To the extent that virgin land was available, the land would be allocated according to the size of the family/lineage. This ensured that subsistence requirements were met. However, from the narratives in the study, it is also true that chiefs gave away land to commercial farmers without regard for future land requirements of their communities. From this point of view one may say that the traditional system of land allocation did not take into account inter-generational equity (future requirements). But it would be difficult to imagine that this is true even now. The corporate ownership of land protects members from unwisely disposing of their land and considers the future needs of the corporate family.

#### **4.5 Are there differences between local residents and outsiders with respect to access to land in the customary sector?**

The study shows that the customary land allocation systems give priority to members of a community when allocating land. Local residents and outsiders have different levels of access to land and other resources. Outsiders are considered as a second priority and only when all members have their land requirements satisfied.

#### **4.6 What has been the extent of land alienation through conversion of land into leasehold or freehold estates?**

From the focus group discussions, people narrated that lots of land was alienated from customary to leasehold tenure. "There was plenty of land then and our forefathers gave the Europeans land in vast quantities without thinking of the future." The stories from the focus group discussions corroborate the historical records as reported by Mkandawire et al. and ELUS. It has been estimated that up to 1.2 million hectares of customary land have been alienated. The problem is greatest in the Southern Region, even though, as a percentage of the total land area, only about 3 percent of the land in the Southern Region is under leasehold or freehold estates. This is because of the high population density in the Southern Region. The land alienation together with the immigration of the Lomwe people from Mozambique in the early 1900s, have resulted in extreme land pressure in the Southern Region. It will be necessary to address this issue, particularly in parts of Zomba, Thyolo, Chiradzulu and Mulanje.

#### **4.7 What are the subsistence strategies among the smallholders?**

What stands out in the cropping patterns in the smallholder sector is the predominance of maize as a food crop. Ninety-nine percent of the respondents grow maize and 71% use it mostly for home consumption. Another striking feature is the small proportion of farmers growing crops that are solely for the market. What is evident from these data is that subsistence cropping dominates the customary sector. The implication is that the national food security is dependent

on the smallholder sector. Further alienation of the customary land will threaten the population's ability to feed itself.

Secondly, the data also indicates that smallholders are diversifying their livelihoods strategies to include sale of labour, livestock rearing, and trading in various commodities. The urban dwellers also appear to be making substantial investments in the smallholder sector in cash and kind.

#### **4.8 What is the extent of land rentals and sales and who are the people selling land and offering land for rent and those buying and renting?**

The evidence from the in-depth interviews shows that a substantial number of people (22 %) regularly rent a piece of land for cultivation every year. The sole reason for renting is shortage of own land. A majority of the people who rent do so from relatives and friends. What is most interesting is that virtually all the rents are on cash basis. The payments range from as low as K10 per hectare to K300 per hectare per year. It is clear from these data that an informal land market (rentals and sales) involving different players is emerging in the customary sector.

In terms of land sales, less than 1 % reported to have ever sold land and it was because they had enough land to sell and it was upon request. We have also noted that land pressure also creates conditions for private ownership of land. We believe that the corporate ownership restricts land selling since land is associated with the survival of the lineage. The implication is that, at least in the foreseeable future land market will be restricted to renting in many parts in the rural areas in Malawi. Substantial land selling will be limited to areas of high population pressure and in areas near urban centres.

### **5.0 RECOMMENDATIONS**

#### **5.1 Changes in the customary system of land allocation over the past 10-30 years.**

The study results show that where there is no more new land, the individual families/lineages control the allocation of land. The authority of the traditional leaders in land matters is lowest in those areas where there no more virgin land. However, the traditional leaders still play an important role in matters of land adjudication. It is therefore recommended that this role be recognised and supported.

#### **5.2 Variations in the system of land allocation by traditional systems (inheritance and marriage system).**

Among the patriarchies of parts of the north, centre and south, land is allocated to male children. The female children are expected to acquire land through marriage. This system may be discriminatory against women as land becomes more scarce. It is recommended that a more equitable arrangement is found for married women e.g. women could be allowed to take part of their husband's landed property should the marriage fail. This is also applicable in reverse when it comes to parts of the Southern Region where *chikamwini* is practised.

### **5.3 Influence of the different systems of inheritance on the availability of customary land and land fragmentation.**

The results show that inherent in the customary law of tenure is corporate as well as individual ownership of land. Once land is allocated to the family, the family owns it in perpetuity. The implication is that it should be possible to issue titles to individual household *banjos*. When this option is considered, it is important to keep in mind the fact that titles make poor people more vulnerable because prospecting land buyers can easily buy the land. The traditional system guaranteed a high degree of social justice in land matters. This partly explains why in both the focus group discussions and in-depth interviews people expressed the wish to restore the chiefs authority in land matters albeit with a proviso.

### **5.4 Current land allocations in relation to smallholder requirements (i.e. their subsistence needs).**

The evidence shows that, at least in the southern region, land redistribution or restitution will be necessary, especially in those areas adjacent to estates with virgin land still available. It is important however to recognise that this will solve the problem only in the short run.. In the long run a landless labouring class will develop. A more permanent and perhaps none agrarian solution to this problem is urgently needed. This implies that efforts to create off-farm employment through small-medium scale enterprises should be intensified. The diversified subsistence strategies adopted by the smallholders are the best guide in terms of what is possible in the area of small-medium scale enterprises.

### **5.5 Differences between local residents and outsiders in respect to access to land in the customary tenure sector.**

Outsiders are considered as a second priority and only when all members have their land requirements satisfied. There is a need to introduce a system which grantees that once land is given to an immigrant into a community it cannot be taken back.

### **5.6 The extent of land rentals and sales**

The evidence from the in-depth interviews shows that a substantial number of people (22%) regularly rent in a piece of land for cultivation every year. The sole reason for renting is shortage of own land. A majority of the people who rent do so from relatives and friends. It must be noted however that there is a great deal of reluctance and apprehension about borrowing and lending land as distinct from renting. People are reluctant to lend land to others because they are not sure the land would be returned. Land renting is one way of opening access to land to more people. Through the codification of the customary law, the fears would be reduced and more rents would occur.

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ANNEX A:

## **Interview and Participatory Rural Appraisal Guide for the Socio-economic Study on Land Tenure**

### ***Introduction***

The surveys will be carried out using Participatory Rural Appraisal Methods including the Semi-Structured Interviewing Technique. This latter can be defined as "Guided conversation in which only the topics are predetermined and new questions or insights arise as a result of the discussion and visualised analyses"

The Interview Guide section is designed to assist the interviewers in the type of questions to be asked and issues to be discussed, that should be asked during the course of the surveys for the above two components. As such they are indicative rather than exhaustive. The interviewer should always rephrase the questions and ask them a second time if the informant does not understand the question or gives an incorrect/inappropriate response.

Depending upon the nature of the informant, it may not be necessary to ask all the following questions. The interviewer should use his judgment in choosing which questions to ask. It will be important, however to ask different informants common questions to verify answers given by the different informants.

If in the course of exploring a particular theme, and in the event of the informant showing a positive interest and providing a good response, the interviewer should probe deeper by asking additional, related, questions that are not contained in this guide specific to the interview to gain more information.

The interview should be informal and conversational. It should also be well defined and systematic. It should concentrate not only on the questions asked, but also on the context in which the interview takes place, how it is conducted and when and where it is done. The interviewer should not be afraid to respond to questions by the interviewees.

The interviewer should under all circumstances show:

- respect for the informant
- interest in what the informant has to say or show him/her
- patience and understanding; wandering around he/she should rush or interrupt the informant
- humility
- materials and describe the methods being used to empower the informants to express and analyse their knowledge

Where possible the interviewer should use diagrams or other visual aids during the semi structured interviews for the Interaction study rather than undertake these exercises separately as they

- provide a focus for attention while discussing an issue
- stimulate discussions by both non-literate and literate people
- can represent complex issues or processes simply
- provide a means for cross checking and therefore provoke effective group work
- evoke creative associations
- stimulate peoples memory about their past and present situations
- reinforce the spoken word
- assist in decision making and monitoring

and as such be of benefit to the Socio-economic Study

Diagrams or visual aids include participatory maps, transects, venn diagrams etc. These are described in more detail in the second part of this guide.

Before the interviewer commences the interview he/she should spend a few minutes to explain the purpose of the study for example:

"On behalf of the Government of Malawi and with funding from the European Commission we are carrying out a study of the Socio-economic characteristics of customary land tenure and the interactions between customary lands and estate lands in terms of resource use and management. The aim of the study is to help the Government identify ways of improving land tenure and develop a new land policy. In order to do this we would like to ask you some questions about your community and your household. Please be assured that all the information you give will be treated as confidential"

**NOTE: THOSE QUESTIONS MARKED IN BOLD MUST ALWAYS BE ASKED AS PART OF THE INTERACTION STUDY**

### *Introductory questions.*

Questions should be asked to determine:

1. Respondents' family history
2. length of stay in the community
3. number and age of family/household members. (Response to this question should be filled in on a pro-forma such as that shown in this guide)
4. language, ethnic group, and religion

The following questions should be asked to the village or group headman to determine:

1. Brief background to the community,
2. community history, how old the community or village(s) are
3. **population size both before and after the establishment of estates**
4. **whether there has been in-migration into the community as a consequence of the establishment of the estates**
5. **whether the establishment of the estates, population growth through in-migration, a combination of these factors or other factors (the village headman should be asked to specify other factors) has created pressure on land as a resource and its availability**
6. **whether there has been any out-migration from the community because of the pressure created on the land by Q5. Above, and what the reasons for the out migration have been**
7. ethnic groups
8. social infrastructure
9. **whether people have been moved off then- land as a consequence of the establishment of estates or land being acquired by the Government**
10. **If the answer to the above is yes have these people received compensation and what form has the compensation taken (e.g. allocation of other land, cash payment, other- to be specified)**
11. Whether the community has its own territory or whether it shares a territory or part of its territory with another community, estate or public lands
12. how the boundaries of the territory were decided upon and how they are defined

13. **whether there has been any change in the territory over time such as an increase or decrease in area**
14. **If the answer to Q13 is yes the interviewer should try to find out the reasons for the change**
15. **whether there are any territorial disputes with other communities/estate lands/public lands**
16. **owners of neighbouring territories and the relationships with these neighbours including estate farmers**
17. **whether "outsiders" use the territory, who they are e.g. estate farmers and the purposes of their use (i.e. to collect firewood, graze animals etc.)**
18. **have the estates contributed to the development of the community through the provision of facilities or have they exploited the community facilities**
19. **where customary land has been converted into estate lands were the members of the community consulted or was it an arbitrary decision taken by the village headman and the Traditional Authorities. Alternatively did the prospective estate farmers negotiate with the members of the community**
20. **has the establishment of estates affected the processes of allocation and transfer of land in the community**
21. **if the answer to Q20 is yes the interviewer should ascertain how**
22. **has the authority/power of the village headman changed over the period of time**
23. **if the answer to Q22 is yes the interviewer should explore the reasons why. Is there increasing Government influence or a lack of land for allocation for example**
24. **whether the village headman keeps records of land allocated to the community members**

In addition, the interviewer(s) should try to establish a list of estate farms in the territory to establish features such as age, size and ownership, no of tenants

## *Theme 1:*

### *Land Allocation - the Respondent's Experience*

Themes 1-3 are to be covered in in-depth interviews and the sample should include respondents from the semi structured interviews of family/household heads and from the homogeneous focal group discussions to determine.

1. If the respondent is the holder of land
2. If the answer to Q1 is no then the interviewer should find out who the holder is and if he does not use the land who does use it and what the relationship is between them
3. How the respondent obtained the land he/she is currently cultivating
4. How long have they been on the land (the interviewer should probe about the involvement of the chief, inheritance (and what types of inheritance are practised e.g. matrilineal or patrilineal), leasehold, other forms. With respect to inheritance has this altered within the customary sector over a period of time as a consequence of land shortage or cultural factors. If this is seen to be the case then the interviewer should note what changes have taken place
5. How they acquired the right to use the land and whether and how much they had to pay for it (the interviewer should ask for a detailed description of the procedure (for each piece of land if the informant has more than one piece of land) and the year it was allocated and the price paid)
6. How much land the informant has e.g. less than one acre or ?acres
7. Whether they have always held this amount or have held more or less in the past
8. If the answer to Q7 is less the interviewer should find out how the informant managed to increase his holding
9. Whether the land is held under the same type of tenure arrangement e.g. formally allocated customary lands
10. **If the answer to Q9. Is no then under what different arrangements is the land held (borrowed, squatter, leased, other - the informant should be asked to specify). Additionally the interviewer should find out whether the land that is borrowed or leased is estate or customary land**
11. Whether the land holding is in different locations both within and outside the community territory
12. If the answer to Q11. Does this cause the informant with any problems in terms of his ability to cultivate the land

13. **Whether the informant has any problems with the way he holds the right to use or access his lands**
14. **If the answer to Q13 is yes the interviewer should find out what the problems are and ask the informant how he would like to see them resolved**
15. **Whether the respondent been involved in any conflicts over land (e.g. conflicts over boundaries, conflicts other land owners estate owners, conflicts with public land)**
16. **If the answer to Q15 is yes the interviewer should ask the informant questions about the reasons for the disputes, how long the disputes have been running, and whether and how the disputes have been resolved?**
17. **Whether problems with the ownership or right to occupy his/her land have affected the way he/she farms the land**
18. **If the answer to Q17 is yes the interviewer should ask the informant to explain how and why**
19. **Whether the informant would alter the way he farmed if he had greater security in his rights to own or occupy the land would**
20. **Whether the informant has been moved from his land as a consequence of the establishment of estates.**
21. **If the answer to Q20 is yes was the informant compensated in any way**
22. **Whether the informant would "register" his right to the customary lands allocated to him if he could do so (in a similar way to the registration of estate lands)**
23. **If the answer to Q22 is yes the interviewer should ask the informant what benefits would he/she expect to get from such registration (e.g. credit extension systems, marketing systems etc.)**
24. **Whether the informant has any land that he rents, lends to others**
25. **If the answer to Q24 is yes the interviewer should ask additional questions to ascertain why, for how long and whether the informant receives any form of payment.**
26. **Whether the informant is aware/has been informed about Government land policies related to land tenure and ownership**
27. **Whether the informant has converted his land from customary tenure to estate land**
28. **If the answer to Q27 is yes the interviewer should find out the reasons why.**

- 29. If the answer is no to Q27 the interviewer should ascertain whether the informant would consider converting to estate land if he had the opportunity and why he would consider doing so**
- 30. If the informant has:**
- a. sold "informally" or rented any of his customary land holdings to estate owners**
  - b. rented any land from estates**
- 31. If the answer to any of the above scenarios in Q30 is yes the interviewer should ascertain the reasons why**
- 32. What the land was used for before it became estate land**

## ***Theme 2:***

### ***Land Utilisation by the Household***

If the data of the Tracer Study is already available, the interviewer should use that as a basis for the discussion; otherwise he/she will have to establish land uses of *all* the gardens cultivated by the household in this farming season by crops and size, undertaking field checks for verification:

1. The interviewer should ask the informant for the yields for each crop and for each garden. The interviewer should relate yields to area and discuss with respondent, and compare the respondent's current land allocation with his subsistence needs
2. The interviewer should ask whether there has been a change in the yields over the last five/ten years and why has this happened. He/she should also ask whether and how the informant could increase his yields
3. The interviewer should determine whether the informant planning to change cropping patterns
4. If the answer to Q3 is yes he/she should ask the informant how or why they are planning to change.
5. The interviewer should determine whether the informant previously cultivated land but has subsequently stopped and how much land he previously cultivated 5, 10 15 years ago for example
6. If the answer to Q5 is yes why did the informant stop. Responses that the interviewer should be looking for include -uneconomic, land deterioration, needed money, nobody to work the land, other job, input problems, other
7. The interviewer should try to find out what happened to this land
8. The interviewer should determine what the occupation of the informant is if he/she has stopped cultivating land
9. **The interviewer should ascertain what the major, different land uses are such as field, fallow, dambos pasture for example and ascertain how much of the territory is under estate lands, how much is allocated and how much is unallocated or communal**
10. **The interviewer should find out how water resources are controlled and managed in the territory and what rights of access the informants have including estate farmers**
11. **Similarly the interviewer should find out how the communal lands are controlled and managed and what rights of access the informants have to the land including the estate farmers**

12. **The uses of various trees should be investigated to determine who uses them and for what purpose and whether there are any rules that govern the usage and whether the estate farmers have access to them**
13. **The interviewer should ascertain where animals graze and drink and find out if there are conflicts associated with each of these activities and between livestock owners and farmers. The informant should be asked if animals come from outside of the community and or estate farms to use the resources**
14. **The interviewer should establish whether there are any resources in short supply and the reasons for these shortages for example has bush land been cleared to establish the estates**
15. **Has the increased pressure on land brought about a decline in soil fertility and hence productive capabilities, and has this had an effect of farming patterns**

### *Theme 3:*

#### *The Household's Coping Strategy*

The interviewer should establish as accurately as possible (always indicate weights, volumes or prices):

1. How much of the yield this year has the informant kept for his own consumption
2. How much of the last yield was bartered locally, given as a gift to relatives, family members, friends,
3. How much of the this farming season's produce of food crops have the informant has sold locally and at what prices and how much more he/she intends to sell
4. How much of this farming season's produce of food crops the informant has sold to ADMARC or traders and at what prices, and how much more do he/she intends to sell
5. Sale of cash crops (e.g. tobacco) and proceeds obtained thereof
6. How much livestock was slaughtered for home consumption during the last twelve months
7. How much livestock was sold during the last twelve months and at what prices
8. How much money was spent on farm inputs over the last twelve months (the interviewer should probe into all different input items. Input items include, for example, seeds, fertilisers)
9. How much money, if any, was spent on labour costs
10. How much cash income, or payment in kind e.g. foodstuffs, seeds etc. did the various household members receive from wage labour over the last twelve months (the interviewer should probe into all sources of wages or salaries including employment on the estates)
11. How much cash income did the household receive from handicraft/ small scale industries, trading over the last twelve month
12. Did the household receive any cash remittances or gifts from family members resident in other communities/ in town/ outside the country (please specify)
13. Has the informant made any improvements on the land allocated to him e.g. the planting of trees
14. If the answer to Q13 is yes how did he pay for these improvements

15. Has the informant made use of credit and how easy was it for him/her to obtain credit
16. If the answer to Q15 is yes: What did the informant use to secure his loan for example crops/property/possessions, a combination of these, if other the informant should be asked to specify. Additionally the informant should be asked who provided the credit, how much and for how long did the informant borrow it
17. Whether the informant has ever been refused credit
18. If the answer to Q17 is what was the main reason for refusal
19. If the informant has not accessed credit in the past would he like to in the future and under what circumstances
20. If the answer to Q19 is yes would he like to use his land to secure credit
21. Whether the informant is planning to change his crops
22. If the answer to Q21 is yes the interviewer should question the informant as to why he plans to change.
23. **Has the informant traded with the estate farms**
24. **If the answer to Q23 is yes what was the nature and value of this trade**
25. **Similarly have the estate farms traded with the community**
26. **What proportion of the village is involved in work on the estates**
27. **When and why community members started working on the estates**
28. **What would life be like without the employment opportunities offered by the estates**
29. **Whether estate tenants or employees work in the community and if so what type of work do they do**

The informants should be asked at the end of the interviews to state the main problems related to the their land-holding that they face at the present time

## *Theme 4:*

### *Land Allocation in the Community*

Themes 4-6 will be approached through homogeneous focus group discussions and interviews with key informants. The focus groups will include women men adults youth and elderly respondents. The village headman should not participate in the homogeneous group discussions only in the wrap up group discussion which will comprise representation from the various, homogeneous focus groups. The village headman should also be interviewed separately as a key informant.

Where relevant the interviewer should ascertain if there have been any changes to the procedures described by the informants from those practised ten years ago, twenty years ago, thirty years ago, and whether system for land allocation, transaction, transaction costs, inheritance was the same as today The interviewer should also ask if it is more difficult to acquire land now and discuss the differences and the reasons behind any changes with the informants.

1. How people in the community, currently obtain land for example through purchase, inherit, gift, beg, borrow, lease, allocation through the chief, other forms).
2. Which are the most common forms of land allocation
3. What land allocation criteria are adopted
4. Whether there are any forms of payment (cash/kind/services) or whether allocation is free
5. If the answer to Q4 is that there is a payment the interviewer should ask how the "value" is determined or set.
6. The interviewer should ask the informants about the transaction process in detail (for example the involvement of village headman, which documents must be signed, involvement of government agencies)
7. If an outsider comes to the community, how does he obtain land? The interviewer should probe into the detailed transaction process.
8. Who inherits the land if the land-holder dies. Again the interviewer should ask the informants to describe in detail how inherited land is transferred and to whom for example is the land allocated to the heirs in the form of undivided shares
9. Whether the community headmen/group headmen/chief of the Traditional Authorities have the same power over land allocation as before
10. If the answer to Q9 is no the interviewer should ask for the reasons that there power has declined. The informants should also be asked whether the Traditional Authority's powers should be restored
11. Whether families/households can choose which piece of land they would like to be allocated or whether the land to be allocated is determined by the village headman
12. Whether there any people in the community who do not have any right to land i.e. are there landless people in the community, who they are and why they are landless

13. If the answer to Q10 is yes the interviewer should find out who they are and why
14. Whether women have the same (traditional) rights as men in the community
15. Whether there lands, currently, available for allocation within the community
16. If the answer to Q13 is yes the interviewer should find out to whom this land could be allocated and at what cost. The interviewer should also try to ascertain when, all land that is capable of being allocated in the territory will be fully allocated
17. If the answer to Q13 is no the interviewer should try to ascertain what alternatives are being made available for families/households to be able to acquire lands, for example purchase, sub-allocation, tenancy/sharecropping. If none of these the informants should be asked to specify other sources
18. Whether there has been a decline in the availability of land and if so what the reasons are for this decline
19. What the rules are governing use of communal lands and resources
20. **Whether people i.e. community members, members of neighbouring communities, outsiders and estate farmers have to pay for the use of these communal lands**
21. **If the answer to Q20 is yes the interviewer should ask the informant how much and whether it is in kind or cash**
22. Whether there are any time limits for the duration of occupancy on allocated lands i.e. is land allocated for 5, 25, 99 years or in perpetuity (for ever) for example
23. If there are time limits the interviewer should seek to determine who decides on the duration of the occupancy whether it is the family/household or whether it is the traditional authorities
24. Whether there any restrictions imposed on the allocation/tenancy/occupancy of lands that may affect the occupants rights to use the land or resources or the right to access land and resources
25. If the answer to Q24 is yes the interviewer should seek to find out what the restrictions are, why there are the restrictions and who imposed them
26. The interviewer should seek the opinion of the informants as to what they consider to be the advantages/disadvantages of individual ownership as opposed to communal ownership, e.g. pooling of resources, access to markets
27. What happens to the land if the household decides to leave the community altogether i.e. whether it reverts to the community for re-allocation by the community headman, or whether the land-holder can sell or lease his rights on all or part of the land

28. To what extent, and in what cases do the Government or other external institutions get involved in land tenure issues in the community
29. Whether there are any government schemes e.g. drainage, irrigation, settlement on all or part of the community or community territory
30. If the answer to Q29 is yes the interviewer should find out what impact these have had on the tenure arrangements in the territory?
31. Whether the community members or estate owners consider that these have been a success.
32. If the answer to Q31 is no the interviewer should ask the informants for their reasons why
33. Whether members of the community have rights to gather resources from within the estate lands
34. If the answer to Q33 is yes the interviewer should ascertain what rights they are and whether the informants have to pay for these rights or have they created rights of exclusion or other regulatory rights for certain categories of people
35. The interviewer should determine the reasons for and methods of conversion from customary to estate lands for example were they established as part of a settlement scheme
36. If the estates were established as part of a settlement scheme was the scheme voluntary or involuntary and where were the people relocated from

### ***Theme 5: Conflict over Land***

The interviewer should ascertain the following:

- 1. Whether in recent years, there have been any conflicts over land in the community, e.g. conflicts between communities, conflicts between community members and outsiders, conflicts with estate owners, conflicts with public land**
- 2. If the answer is yes to Q1 the interviewer should find out why there have been conflicts, what the conflicts have been about and whether they have been resolved**
3. The interviewer should find out how the disputes are normally resolved -getting the informants to fully describe the processes?
4. Whether the informants say that there has been an increase or decrease in the incidence of disputes over the last 5, 10, 15 years
5. If the answer to Q4 is yes the interviewer should find out why there has been this increase or decrease?
- 6. Have there been any incidents of encroachment by the estates on customary lands and vice versa and have these been the cause of conflict**

**The interviewer should also try to find out whether there are any other types of conflict for example social conflicts, resource conflicts and economic conflicts (labour and trade) and whether these are related to the establishment of the estates**

***Theme 6:***

***Prospects, Possible Improvements***

The interviewer should find out:

1. What the respondent feel about the changes which have occurred in the land allocation and adjudication process
2. How the respondent assesses the different types of tenure
3. Whether in his/her view, the customary system of land allocation should be maintained/ improved/ modified or whether it should be replaced by some other form of tenure. The interviewer should ask for suggestions for improvements and what if anything the government or Traditional Authorities should do about it
4. How the informants would feel about the introduction of a land tax and whether they could afford to pay or be willing to pay
5. If the Government introduced new land tenure policies that would increase security for example, whether the informant would alter his farming practices
6. If the answer to Q5 is yes the interviewer should ascertain how the informant would improve his farming practices
7. If the answer to Q5 is no the interviewer should find out why not
8. **Should the estates be privatised and rights returned to individual owners or former owners?**