

**PRESENTATION OF THE NDUNDA CASE STUDY.**

**Lilongwe, May 1998**

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## **I - MAIN ELEMENTS OF THE METHODOLOGY OF THE SPECIAL LAND TENURE CASE STUDY.**

The Report on the Special Land Tenure Case Study gives details on the methodology used. Its summary is presented below.

### **I - 1 OBJECTIVES OF THE CASE STUDY**

The case study examined the *Ndunda* experiment, in what is now the Lilongwe West Rural Development Project from legal, administrative, institutional/organisational and Socio-economic view points to determine whether the experiment can be considered to have been successful in its implementation and whether it could or should be extended nation wide.

In addition, a very important aim of the study was to establish changes in land tenure arrangements in the project area over time. The study did not confine its focus to the analysis of an end state, but to rather, from the respondents' own accounts, reconstruct the history of land allocation and adjudication over the last few decades.

### **I - 2 SURVEY DESIGN**

The main objective of the sample design was to ensure representation of all the sub-populations considered important for the Case Study. In line with the nature of a case study approach, no sampling in the statistical sense was done. But care was taken in order to ensure that a fair number of elderly people who can recall the evolution of land tenure arrangements in the area over the last few decades was represented among the respondents.

### **I - 3 METHODOLOGY**

The methodology adopted for the case study was similar to that adopted for the Socio-economic Study on Land Tenure and the Customary/Estate Lands Interaction Study, as discussed and agreed during the CLUS Methodology Workshop held on 13/14 June 1997. In line with that methodology, the following methods were applied:

1. **Semi-structured interviews:** at the household level, in focus group discussions and with key informants including group village headmen, head of kin groups etc.
2. **PRA tools:** including focus group discussions, participatory mapping and impact flow diagrams.

3. **Key informant interviews:** with representatives from the key relevant Government line agencies; Local Government, banking and other credit institutions, Group village headmen, village headmen, ndunas and lineage heads.
4. **Desk research:** review of relevant legislation, government reports, consultancy reports and other documentation e.g. statistical data concerning title registration in the *Ndunda* etc.

A detailed interview questionnaire guide was prepared for the semi-structured interviews, along the lines of that already prepared for the Socio-economic Study on Land Tenure and the Estate/Customary Lands Interaction Study.

We sampled by input units. The basic unit of analysis for the study is not the household, but rather the family (in the definition of a lineage head) which was issued a land title at the inception of the scheme. In each village one key informant (a title holder or chief) in-depth interview was conducted. In addition, two in-depth household interviews and two focus group discussions were conducted. The household interviewees were selected purposively in each village, but care was taken to ensure that the sample encompassed representatives of all generations and a fair number of male and female respondents. Two types of focus group discussions were conducted in each village; one comprising women only and another comprising men only. These group discussions also included diagramming techniques from the Participatory Rural Appraisal methodology as appropriate.

## **II - MAIN FINDINGS OF THE SPECIAL LAND TENURE CASE STUDY**

### **II - 1 MAIN FINDINGS**

The Report on the Special Land Tenure Case Study presents detailed results on this component of the Customary Land Utilisation Study. The main survey results can be summarised into six points.

#### **II - 1.1 Did the *ndunda* registration provide security of tenure?**

The major change that the *ndunda* registration brought is that land is registered in the name of the village headman. This change has had desirable as well as undesirable consequences. Two of these consequences are particularly important. First, the *ndunda* title registration adversely affected the transfer of land because whereas before the *ndunda* parents were responsible for allocating land to their children, now it is the village headman or lineage head. When the parents are dead the children lose out since the village headman or lineage head controls the land. The *ndunda* has given the title holder power over the other family members.

Secondly, at the time of registration, women did not have the same right of registration as men in the community especially in the *virilocal chitengwa* because the women are all marital immigrants.

There have been some advantages of the *ndunda* too. The most notable is the effect it has had on the perception of people of the title. The legal status had brought respect to the extent that people feel more secure.

## **II - 1.2 Was the *ndunda* registration suitable to the customary law circumstances?**

The problem with the *ndunda* was that both the legislation and the registration process were introduced without the knowledge and input from the owners of gardens. As such it did not take into account the realities of customary tenure. Hence the registration was in the village headman's name and that people were expected to cultivate land registered in the name of their VH. The problem was that there was no relationship between the land belonging to a community and the gardens of the community members. It was quite common to find that people of one village had gardens in the next village and vice-versa. This is why the recommendations of the *ndunda* have been ignored. The result was that, in many communities, people were given titles to land that, under the customary law, belonged to some other people. In a sense, the *ndunda* was not really implemented since many families still cultivate their customary allocated land.

## **II - 1.3 Did the *ndunda* registration achieve the perceived benefits (e.g. increased productivity; improved access to credit markets)?**

Insofar as credit and agricultural productivity is concerned, it appears that the *ndunda* registration coincided with the establishment of the Lilongwe Land Development Programme. Under the LLDP credit clubs were established through which farmers could obtain agricultural inputs such as seed and fertilizer. It appears that this initiative had more impact in access to credit and thus agricultural productivity than the *ndunda*.

Many respondents say the *ndunda* did not improve productivity. Those who recall increased productivity frequently refer to the scheme and the formation of credit clubs. In summary, the registration exercise did not achieve the perceived benefits. Even land consolidation did not occur.

One benefit of the *ndunda* was that it reduced disputes on encroachment in the sense that boundaries were made clearer due the beacons.

## **II - 1.4 Did the *ndunda* registration allow the development of a land market?**

The registration did not permit the development of a land market. This is most likely because the title is given to a corporate family. An individual cannot sell the piece of land without the consent of the rest of the family members. In this sense, the *ndunda*

brought about more security to the corporate ownership of land.

## **II - 1.5 Did the *ndunda* registration allow individualisation of customary tenure to evolve?**

To a small extent individualisation of customary tenure has occurred and is still occurring. The records from the Ministry of Lands, Housing and Physical Planning indicate that a sizeable percentage (4.6%) of the smallholders converted the *ndunda* to leasehold titles. The rate of conversion will be slow due to the reasons enumerated in this report.

## **II - 1.6 Can statutory law, in particular CLDA, supplant customary law?**

Looking at the perceptions and interpretation of the people of the *ndunda*, we get the impression that for the statutory law to supplant the customary law, care would have to be exercised to ensure that no individual or groups of people are adversely affected by the law. Special consideration should be given to women in *virilocal chitengwa* marriages, men in *uxorilocal chikamwini* marriages and children. Consideration should also be made of special land arrangements in the customary sector such as reserves for residential land, forestry, grazing land, graveyards, etc.

## **II - 2 LEGAL IMPLICATIONS OF THE FINDINGS OF SPECIAL LAND TENURE CASE STUDY**

The Customary Land Development Act (CLDA) was enacted in order “to provide for the ascertainment of Rights and Interest in Customary Land, for the Better Agriculture Development of Customary Land and for Purposes connected therewith and Incidental thereto”.

The CLDA is not complete in itself in the sense that after ascertaining of the rights and interests in customary land such rights and interests are then supposed to be registered under the Registered Land Act (RLA).

It would appear then that CLDA in effect made an attempt to change the system of land rights from customary to modern concept of land ownership which is governed by among other sources of law the RLA, and the Land Act.

The Local Land Boards Act (LLBA) was passed in order to

“provide for the establishment and powers of Local Land Boards, and for the matters incidental thereto and connected therewith”

In order to protect the rights and interest registered under the Registered Land Act section 6 of the LLBA provides that no transaction shall occur without its approval.

As noted above the status of customary land changes into private land after registration. Section 3 of the Wills and Inheritance Act provides that the devolution of private land shall not be governed by customary law:

Again Section 61 of the said Act provides that:

“Where all the near relatives of a deceased person who are not minors agree on the manner of distribution and administration of a small estate<sup>1</sup> they may proceed in accordance with such agreement.

The devolution of private land is governed by section 62 of the said Act which provides that

“where a small estate includes private land no dealing with such land shall, subject to part V111, be lawful until an administration grant has been made in respect of the estate under section 65<sup>2</sup>”

Section 65 of the Act then outlines the procedure for obtaining administration grant for a small estate of private land in the Traditional Court (in dissolution).

The registration of rights and interest in land is not supposed to be confined to people who reside in the Ndunda. Indeed wives who find themselves in “Chitengwa” in a Ndunda need to have their interests registered as well as the children’s. Discrimination against these only emphasises the fact that for the majority of the people interviewed their value system is governed by a traditional world view in which customary law is the only legitimate form of establishing rules on access to land.

In so far as the Traditional Courts provided a mechanism for resolving the devolution of private land that amounted to a small estate their dissolution means that only the High Court system will be entertaining such cases. The question that begs an answer is whether there is enough capacity in that system or whether special tribunals should be considered.

The CLDA did, to a larger extent, try to fully take into account the traditional and informal systems of customary tenure. The African concept of land ownership is that land is owned by a family rather than an individual. By making provisions for the registration of family land and replacement of family representative and providing for the partition of family land into individual title it must have been assumed that direct issuance of individual titles may not blend well with traditional.

The LLBA in a way provided for a tribunal to resolve land issues. In a sense the powers of the chief in these matters were assumed by Local Land Boards. If the chiefs

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<sup>1</sup> Section 2 of the Wills Inheritance Act defines a small estate as the estate of a deceased person consisting of property which does not exceed K10,000 in value at the date of the death of the deceased without making any deduction for debts

<sup>2</sup> If the private land is not a small estate then only the High Court System has jurisdiction over its devolution.

are part of the Local Land Boards then their powers have not been taken away rather, they have just been modified. The other members of the Board could be considered as counsellors.

Customary law changes over time and is said to differ from one local area to another and as such codification of the same may render it static and unresponsive to change. However, as stated above the LLBA serves as expedient instrument for interpretation of issues of customary nature as well as modern concepts of land ownership.

### **III - RECOMMENDATIONS OF THE SPECIAL LAND TENURE CASE STUDY**

The CLDA implementation in Lilongwe West Rural Development Project has shown that it is not compatible with the customary law. In addition, it is not cost effective in terms of increasing access to credit and improving agricultural productivity. Furthermore, the registration brought about adverse ramifications to certain groups of people especially women and children. Potentially, it can also increase conflicts on the use of communal landed resources if followed strictly.

The only positive thing about the registration is that it brings a sense of security to those holding the titles due to the legal status of the registration and the existence of the beacons. However, it is within this same security that those whose pieces of land are in the ndunda of a title holder feel insecure.

Unless we find other more compelling reasons for the continuation of the ndunda, the costs compared to the benefits are in favour of maintaining the customary tenure arrangements. Inherent in the customary tenure is the potential for privatisation but at a carefully controlled rate through the corporate family structure and values.