

REPORT OF LAND AND AGRARIAN REFORM IN MALAWI

Submitted to:
Community Technology Development Trust (CTDT)

By
Centre for Environmental Policy and Advocacy
P. O. Box 5062
Limbe, Blantyre Malawi
Tel: +265 1 823 793
Fax: +265 1 822 593
E-mail: maybin@cepamw.com
Web: www.cepamw.com

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EXECUTIVE SUMMARY

Land is the most important asset in any country; and for agro-based and predominantly rural economies such as Malawi, land is key for sustainable livelihoods. Colonial land policies which were intended to entrench colonial and settler interests continue to determine

Government policies in Malawi and other Southern African countries. Land reforms implemented since the 1960s have been driven by neo-colonial institutions such as the World Bank and other donor agencies. Where home grown solutions have been tried such as in Zimbabwe, the process has been so much politicized that any merits have been overtaken by party propaganda.

There are concerns that land reform concentrates on issues that may not address key concerns of land dependent communities. There is a tendency to finance activities that merely increase bureaucracy and paperwork such as registration of customary land without complimentary programmes to increase land productivity so as to improve food security, employment creation, sustainable livelihoods and other such concerns. In some cases attention is drawn to projects that will entrench the status quo such as resettlement of local people so as to reduce pressure on foreign owned states. Even where reforms are properly targeted however there is often little coordination between institutions that drive land reform such as departments of lands and development or production oriented institutions such as departments of agriculture, economic planning and finance. The results have been little or no change on the ground but massive debts for the country.

This report provides a review of the Malawi land reform process and offer preliminary findings and recommendations on key issues to be addressed to ensure that the reform process is in the interest of a majority of Malawians. It also addresses issue pertaining to agriculture reform and the extent to which land reforms facilitate productivity. We carried out literature review and consulted stakeholders in a few districts in Malawi through a questionnaire and guide, which are attached as Annex 2.

The literature review and consultation show that Malawi has actively pursued reform of land policy since 1996 and is now developing a new land law. The main land legislation therefore remains the Land Act 1965 which the country had at independence. The state has too much control but no capacity to oversee land management. Stakeholders such as traditional leaders have *de facto* powers of control but no real *de jure* powers. The effect is a system of land management that is easily manipulated, usually at the expense of the poor. Landlessness has increased mainly due to population pressure and expansion of the estate agriculture from conversion of customary land.

However the use and management of the little land at the disposal of smallholder farmers is hampered by poor extension services, lack of credit for inputs and limited market access and price information. Land resource management is in disarray; soil erosion and siltation of water bodies has reduced productivity of land. Yet agriculture policy seems silent in these issues; where there are attempts to deal with subsidy and access to inputs and credits, these are either short term or project based making agriculture enterprise very uncertain and risk. The vagaries of weather exacerbate these risks. It is well known that the poor are least able to cope with these shocks; poverty is rampant and food insecurity common, now throughout the year.

We have made a few recommendations in this report. Access to land should be a constitutional right; basic land law should stipulate the content and meaning of this right. However access to land should be accompanied by provision of services and infrastructure that facilitate land productivity to ensure food security, sustainable livelihoods, employment

creation and other critical rural concerns. It is noteworthy that the Malawi Constitution guarantees every Malawian the right to development (Section 30). We believe that providing these services and infrastructure will implement this important provision. It will also enable government fulfill its constitutional mandate to enhance the quality of life in rural communities. The constitution calls upon Government to recognize rural standards of living as a key indicator of success of its policies: Section 13(f). We believe that land and agrarian reform bears the largest burden for fulfilling these mandates. Finally, we believe that Government needs to budget for this reform process rather than rely on donor resources with the conditionalities often attached to these resources.

LIST OF ACRONYMS

ADC	Area Development Committee
ADMARC	Agricultural Development and Marketing Corporation
AIAS	African Institute for Agrarian Studies
ALDSAP	Agricultural and Livestock Development Strategy and Action Plan
ASAC	Agricultural Sector Adjustment Credit
ASAP	Agricultural Sector Assistance Program
CBO	Community Based Organization
CEPA	Centre for Environmental Policy and Advocacy

CISANET	Civil Society Agricultural Network
CTDT	Community Technology Development Trust
DFID	Department for International Development
IRDP	Integrated Rural Development Projects
MARDEF	Malawi Rural Development Fund
NASFAM	National Smallholder Farmers Association of Malawi
NORAD	Norwegian Agency for Development Co-operation
NRDP	National Rural Development Program
SADC	Southern Africa Development Community
SAP	Structural Adjustment Program
TIP	Targeted Input Programme
USAID	United States Agency for International Development

1.0 Background to the Project

Land has become one of the most contested resources throughout Africa. This problem is mostly pronounced in those countries that inherited colonial laws that governed land ownership, access and use. Most countries in the SADC region, Malawi inclusive, are still grappling with challenges of land and agrarian reforms, more so as they impact on equity, food security and poverty reduction issues. A number of factors have been attributed to the current challenges facing land and agrarian reforms in Malawi. These include: -

- Conflicts arising from the customary and contemporary laws regarding land ownership and distribution;
- Challenges arising from the establishment of estates land;
- Rural urban migration which creates a heavy demand for urban agriculture;
- Inappropriate policies and legislation governing land ownership (tenure), distribution and use;
- Intellectual Property Rights and their implication on the poor and landless;
- Lack of appropriate models for land acquisition and equitable distribution.

The challenges can be grouped around the following thematic areas: land distribution, land utilization, land tenure, land administration and land adjudication. All these factors have a profound impact on food security and poverty reduction. Engaging a broader spectrum of stakeholders to influence land and agrarian reform strategies in the country is one key strategy that is expected to minimize future conflicts around land. Thus the main objective of the Support to Land and Agrarian Reform Project is to “Influence Land and Agrarian Reforms in Malawi”, in order to: -

- Address the colonial imbalances currently existing in the land ownership;
- Review the customary laws governing land ownership and distribution and improve access to the landless Advocate for pro-poor land policies with a thrust towards poverty reduction;
- Facilitate the establishment of institutional framework that are supportive of people-centered land and agrarian reforms (credit facilities, extension services, infrastructure development);
- Up-scaling and replication throughout the region of best practices and approaches employed by different countries implementing agrarian and land reforms.

This report examines land and agrarian reform initiatives in Malawi to determine the manner in which they address several benchmarks identified by the project. These include poverty

reduction, employment creation, sustainable livelihood, sustainable environment and natural resources management, among others. The aim is to take stock of these initiatives and contribute to ensuring that reform of land and agriculture policy addresses issues that matter most to a majority of the population.

2.0 Methodology

The project involved desk study review to isolate major issues in land and agrarian reform. Various literature and publications were reviewed, as well as policies and legislation on land and natural resources and other related literature materials on land and agrarian reform. The desk study was commissioned in order to come up with an inception report that identified information and gaps necessitating stakeholder consultations. Key stakeholders were identified and guidelines for stakeholder consultations were also formulated. The stakeholder consultations were done by using the guidelines that were formulated and the research team visited all key stakeholders in their offices.

To compliment the questionnaire, participatory consultations with the communities were conducted in selected Districts in the three regions of the country. The consultations mainly used focus group discussions to enquire and analyze issues. In order to collect useful and relevant data, a cross section of the community including chiefs, smallholder farmers, the people on the resettlement program were involved with due consideration to gender balance in participation. The districts where consultations were held are Mzimba, Kasungu and Mulanje in the Northern, central and Southern regions respectively.

2.1 Challenges

During the consultations a number of challenges were met especially those relating to collection of information. In most government department it was very difficult to obtain information i.e. policies, legislations relating to land and agricultural and published documents. The officers in government departments were very unwillingly to provide information and most then were referring all queries to their senior officers who were not even available in their offices.

3.0 Country Context: Land and Agrarian Question

3.1 Historical Evolution

Since colonial times, the question of land as a basic resource for livelihoods has featured prominently in socio-economic and political debates. It is sensitive, as it constitutes the core of human survival. Numerous attempts have been made to restructure land relations. In colonial times, the focus was on how the metropolitan state could maximize profits for its own interests; often clashing with local interests and engendering political revolts. The post-colonial Government sought to utilize land resources to generate resources for national development more often than not replicating colonial policies of promoting export agriculture. Economic, natural resources and agriculture policies and laws reflected these interests and many have not changed to date.

Prior to the advent of colonialism, there were no written records relating to ownership of land¹. Land was held through traditional leaders on behalf of the community in accordance with the community's respective customary laws. Individuals in the tribe had the right to use the land but not to sell it. However, they were allowed to transfer rights in land, for consideration, or as gifts subject to the local conditions and customs, while interest in land could also be inherited in accordance with the respective customary laws.

Historical records indicate that the original inhabitants of Malawi were the *Akafula* or *Abathwa* from 300 AD-1500 AD. In the 9th century pastoral and agricultural groups (the first being Chewa groups) from the great lakes region began to enter the country. These groups are believed to have driven the *akafula* into Namibia. New groups continued to come in the country, the largest influxes being in the 19th and 20th centuries, namely the Yao, Ngoni, Sena and Lomwe².

The effects of these influxes were intensified wars among various groups over territory and slave trade. Land was acquired by military conquest and occupation of unoccupied or abandoned land. Strong groups acquired the best lands not through treaties or documented negotiations, but on the basis of capitulation and progressive encroachment³. Between 1891 and 1896 British colonial forces intervened to end these ethnic wars.

Europeans intent on setting up commercial and agricultural enterprise established estates through grant of concessions. To the indigenous communities, these concessions were essentially in the nature of occupation licenses, not at all conferring property rights to foreigners. The foreigners clearly understood that communities and their chiefs had ownership and control over their land and history indicates that coercion was also used in bringing about consensus in respect of these concessions⁴.

The Land Ordinance of 1951 defined land as public, private or customary. However, "customary" land, was in essence defined as a mere species of "public land" (or crown) land. Hence, by virtue of this ordinance Malawi citizens became tenants on their own land. This position was re-enacted in the Land Act (Cap 58:01), which came into force in 1965. The passage of the Land Act in 1965 did not change the status and insecurity of customary land rights caused by the application of the Land Ordinance of 1951. An attempt was made to provide a comprehensive body of land law in 1967 with the passage of the Registered Land Act (Cap 58:01), the Customary Development Act (Cap 59:01) and the Adjudication of Title Act among others. However, the limited application of these Acts made the effort to secure customary rights by the enactment of the Registered Land Act an incomplete experiment entirely dependent on the efficiency of land administration personnel⁵.

¹ Government of Malawi (1997) Report of the Presidential Commission on Land Reform (Lilongwe)

² F. Kandodo (2001) Land reform in a regional context: Malawi experiences. Paper presented at SARPAN conference on Land Reform and Poverty Alleviation in Southern Africa.

³ Government of Malawi (1997) Report of the Presidential Commission on Land Reform (Lilongwe)

⁴ See F. Kandodo (2001) Land reform in a regional context: Malawi experiences. Paper presented at SARPAN conference on Land Reform and Poverty Alleviation in Southern Africa (South Africa).

⁵ Malawi Government (2002) Malawi National Land Policy (Ministry of Land, Survey and Physical Planning, Lilongwe)

After independence, land matters in Malawi entered a new era. The Government fully realized that land was the country's greatest asset. At that time the majority of land was held under customary tenure. The Government considered that the system of land holding was outmoded and impeded agricultural progress and the general economic advancement of the country. In 1967 Dr. Hastings Kamuzu Banda put the point scuttle when he said "our customs of holding land in this country, our methods of tilling the land in this country, are entirely out of date and totally unsuitable for economic development of this country"⁶. From then on, the government was committed to reform⁷. However, the form that reform should have taken remained to be decided. The country has endured a history of continuously reconstituted clusters of traditions, colonialism, rules, expectations and conflicts, which gave rise to changing land regulation practices⁸.

3.2 Analysis of Land Availability Problems

The majority of Malawi's arable land of both leasehold and customary tenure is underutilized and unregistered. There are three categories of land in Malawi: customary, private and public. Customary land tenure is the most widespread category. However, other sub-tenures that are commonly practiced by customary land holders (renting and tenancy) are not legally recognized. Malawi has a total of 11.8 million hectares of which 9.4 million is land and 48% is under cultivation. The area potentially available for agriculture by small farmers is approximately 4.5 million hectares after adjusting for wetlands, steep slopes and traditional protected areas⁹. Agriculture estates occupy 1.2 million hectares. With population growth and customary inheritance system, land has become more fragmented. Between 1.8 to 2 million smallholder farmers cultivate on average 1 ha and 30,000 estates cultivate 10 to 500 hectares. The landholding size in the country has diminished from 1.53 ha in 1968 to 0.8 ha in 2000. And according to the Commission report on land reform, the land balance is as follows;

- Customary: 6,600,000 hectares (2,100,000 is unsuitable for cultivation);
- Public land: 1,800,000 hectares;
- Estate land: 1,100,000 hectares and;
- Urban land: 300, 000 hectares;

Poverty in Malawi has been linked to landlessness or land constraints. The mean household land holding is as follows: -

⁶ S. Khaila (2004) Lecture notes on land and agrarian change in Malawi, Bunda College of Agriculture, Lilongwe, Malawi

⁷ Government of Malawi (1997) Report of the Presidential Commission on Land Reform (Lilongwe)

⁸ Malawi Government (2002) Malawi National Land Policy (Ministry of Land, Survey and Physical Planning , Lilongwe)

⁹ Malawi Government (2002) Malawi National Land Policy (Ministry of Land, Survey and Physical Planning , Lilongwe)

- Ultra-poor 0.84 ha
- Poor 0.91 ha
- Non-poor 1.10 ha

Landlessness has a considerable bearing on food security. The mean household maize production per capita is as follows: -

- Ultra-poor 48.5 kg
- Poor 63.3 kg
- Non-poor 115.8 kg

Around the country, the poorest of the poor are the landless in rural areas, followed closely by the land poor, those whose poor quality lands are too small to support a family. They make up the majority of the rural poor and hungry, and it is in rural areas where the worst poverty and hunger are found. The expansion of agricultural production for export controlled by wealthier producers, who own the best lands, continually displaces the poor to ever more marginal areas for farming. Land constraints arise from fragmentation, insecurity of tenure, high population density and unorganised land markets. Pro-poor growth is centred on agricultural development, hence land is critical but the central to which land reform is central to pro-poor growth in agriculture.

Agricultural strategies in the just abandoned Malawi Poverty Reduction Strategy do not prioritize land reform as a necessary condition for any agricultural development strategy. Landlessness is ranked 7th on the priority list coming after (1) access to inputs (2) research and extension services (3) access to markets (4) irrigation (5) specific crops (6) livestock promotion. This means that if there is any funding for any agricultural purposes, the issue of landlessness will definitely not be tackled in this regard. Land reform would also need to focus on organisation of existing small land holdings (consolidation) and not only on the landless. The major land problems Malawi is currently facing are mainly due to residual effects of colonial policies which were in support of export agriculture, increased population pressure especially in the southern region, lack of information on available suitable arable land and non-committal of government in addressing land inequalities in the country.

Access to land by poor people is essential if they are to contribute to and benefit from economic growth. In this regard, equitable distribution of assets, especially land, promotes higher productivity and rates of economic growth. Secure, safe and affordable land is a necessary, but not always sufficient condition for reducing poverty. Improved access to services such as health, education, skills, finance, transport and knowledge is a pre-requisite to poverty reduction. The many initiatives of land reform have not adequately addressed these support services. It has assumed that other sectors will address these requisite support services. The result is that support to land reform is lacking.

4.0 Country Status and Challenges

4.1 Land Policy Reform

On March 18, 1996 a Presidential Commission of Enquiry into land reform was gazetted. The objective of the commission was to investigate and review land problems and recommend a national land policy that would promote equitable access to land, security of title to land, and improved land administration. Thus Government had recognized the need for a guided future in land administration, redistribution and management. The Commission held extensive consultations and public hearings throughout the country and submitted its report in 1999. Among other matters, the Commission noted several anomalies in land administration and management as well as skewed ownership patterns that have contributed to critical shortage of land in several parts of the country. Several recommendations were made including the review and drafting of land related legislation.

Following the Commission's report another participatory process for the development of a land policy commenced. This culminated in the adoption of the National Land Policy by Cabinet in January 2002. The Policy is a comprehensive document touching on various land related issues such as titling, land administration, ownership, land use and management as well as environmental and planning aspects. It is also important to mention that in addition to the report of the Presidential Commission and the Policy, several studies have been undertaken on land matters. Notable among these are the Customary Land Utilization Study, the Public Land Management Study and Estate Land Utilization Study¹⁰. These reports not only detail land related issues and problems but also review land related legislation and offer some guidance on the path land reform in Malawi can take.

4.1.1 Highlights of the National Land Policy

A policy is a statement of intent for achievement of stated objectives. It has no force of law but is often the basis of legislation. It may be implemented without legislative instruments, this may be in form of administrative guidelines or directions or projects or programmes as long these do not conflict with existing law. The Land Policy has made a number of recommendations which will have to be enacted into legislation. Some of these include:

4.1.2 Distinction between Government and Public Land

The current categorization of land under the Land Act is that land is divided into public, private and customary categories. The Presidential Commission on Land, in accordance with section 207 of the Constitution, recommended that all land should be vested in the people of Malawi as follows: -

- That radical (absolute) title to all land be vested in the people (citizens) of Malawi and not in the President;
- Public land be held (and not owned) by the Government on trust for citizens of Malawi; and

¹⁰ Malawi Government (2001) Natural Resources Management Policies, Laws and institutional framework in Malawi Vol. 1(Environmental Affairs Department, Lilongwe)

- Customary land be defined territorially and held (not owned) by traditional authorities on trust for the members of the communities resident in their jurisdictions.

Thus the Commission recommended retention of the current categorization of land into public, private and customary categories.

The Land Policy has to some extent retained the above categorization but has made substantial changes including, for example, the definition of government land which is as follows:

***Government Land** will henceforth refer exclusively to land acquired and privately owned by the government to be used for dedicated purposes such as government buildings, schools, hospitals, public infrastructure or made available for private use by individuals and organizations.*

It may be noted that private ownership of land by Government may encourage wrong perceptions about the ownership of such land and therefore promote unauthorized dealings in public property. It may imply to some that such land belongs to the Government in power. Land acquired and used by the Government for schools, hospitals or National Parks to which the public have access, should remain public land. The usual legal restrictions on access to and use of such land should continue to apply and, where necessary, strengthened.

The policy objectives intended to be achieved by the concept of Government land as defined in the Land Policy may be met by adopting the categorization recommended by the Commission and clearly stipulating the terms of trusteeship to which the Government and traditional authorities are subject including the usage, access to and dealing in such land.

The Law Commission has published draft legislation to amend the Land act, 1965 and other land related legislation. The draft has divided land into public and private land and has made customary land as part of public land. It also provides that when customary land is registered, it will be part of private land. A draft Customary Land Management Act has been prepared. The net effect of these changes would be to abolish customary land; hence there is some confusion as to what the Customary Land Management Act will regulate.

The Land Policy categorizes some customary lands as public land. It states that: -

*In the case of customary land managed by Traditional Authorities, common access land reserved as **dambos**, community woodlots, etc, will be classified as public land exclusive to members of the Traditional Authority*

This may undermine local ownership or holding of customary land and seems to suggest that government control of customary land in existing law will continue. It also runs counter to current notions of decentralization and community based management of natural resources. In addition this formulation will expose customary land to the kind of exploitation that led to its loss to private land under current law.

It is our view that so long as there is clear stipulation of the duties and responsibilities of traditional authorities in respect of management of customary land including *damboland* and

village woodlots, the policy objectives of sustainable land management can be met without defining such customary land as public land.

It is noteworthy as well that the policy deals with land tenure reform through registration of customary parcels of land as if such reform will solve current problems faced by local communities such as food insecurity, unemployment or increase agricultural productivity among others. It is necessary for the policy to address what these tenure reforms would achieve.

4.1.3 Land Access to Non-Citizens

Land is a national asset and must therefore be used for the benefit of the people of Malawi. Ownership of such an asset therefore ought to be vested in citizens of Malawi without discrimination on grounds of race, religion, colour, sex or such other characterization that offends section 20 of the Constitution.

The Land Policy seeks to prohibit grants of freehold land to non-Malawi citizens. It states that: -

1. The amount of freehold land in Malawi owned by non-citizens will be frozen and limited to freehold land already registered to non-citizens as of 17th January 2002. Non-citizens will no longer be allowed to acquire title to any new freehold estate.

2. Non-citizens and foreign companies will be permitted to lease land from the Government or directly from private landowners for investment purposes in accordance with their residential and investment objectives.

3. From the coming into force of this policy, freehold ownership will be a privilege reserved for citizens of Malawi. Foreign investors interested in freehold land for investment purposes will be encouraged to form partnerships and/or joint ventures with Malawians.

The reasoning seems to be that the freeholder has unlimited title over such land and that such 'absolute' title should not be in the hands of foreigners. The restrictions to non-citizens holding freehold land are probably intended to free land for citizens of Malawi instead of tying it up forever in favour of persons who have no allegiance whatsoever to Malawi. The policy does not however explain this in detail. There is not even any reference to the fact that freehold land only accounts to less than 3 % of available land.

Under the received common law freehold land is the longest term that a person can acquire in land. Freehold is akin to holding land 'forever'. It has however nothing to do with size of the land in question. Further, in law a freehold land holder is not an absolute owner. The state still retains powers of eminent domain over the land and holds the radical title to such land. The state can therefore promulgate such legislation to regulate freehold land as it deems fit. The Land Amendment Act, 2004 has already put this policy statement into Law.

It is our considered view that land policy needs to deal with two aspects that relate to access to land, namely land size and length of the term. These must correlate to existing ownership

structures and how they deny Malawians access to land in their own country. Size and length of term of holding should also relate to the type of investment in question. The new policy and law on foreign owned land is worrying some people. Existing land holders have to convert their freeholds into 50 year leaseholds unless they become citizens, and future investors are subject to a series of restrictions. The 50 year period is considered by some to be too short for investment, and there are concerns that the new law will undermine investors' confidence and impact badly on rural development in general¹¹. There is a concern, that the Land Policy seems eager to jump to repudiate freeholds held by foreigners without demonstrating clearly what benefit to Malawians will arise as a result of the abolition of freeholds owned by foreign nationals.

It is our view that a genuine investor will be attracted to invest in Malawi if the investment climate is right. Availability of land suitable for the investment in question coupled with security of tenure of such land is necessary. Leasehold land is as good as a freehold in this respect. The only difference is that the freehold title is unlimited in duration while the leasehold is limited to the term granted. Most housing land especially that purchased from the Malawi Housing Corporation by most Malawians is in form of leaseholds. Leases are normally renewed upon expiry and the holders thereof do not perceive they have a lesser right than freeholders. But even if they are not renewed, the lessee will invariably be compensated under the relevant legislation such as the Land Act or the Land Acquisition Act. If the existing legislation is inadequate in respect of compensation then appropriate provisions may be enacted to assuage the fears of would be investors. It must be placed on record that neighbouring Mozambique and Zambia have no freehold land but there is no evidence whatsoever that investors would rather invest in Malawi because Malawi grants freeholds.

Foreign investors can therefore be granted leaseholds but the term of such leaseholds should correspond with the type of investment being proposed. The restrictions on holding freehold land by foreigners can not be discriminatory on grounds of nationality since foreign individuals shall have the right to acquire leaseholds, an equally valuable property right. If non-Malawi citizens wish to acquire freeholds for whatever reason they can apply for citizenship.

The requirement that non-Malawi citizens should obtain Malawi citizenship is fair and reasonable. In this regard the onus will be on Immigration and Citizenship authorities to process citizenship applications with fairness and expedience and in accordance with the law. Where the law falls short of constitutional rights and principles appropriate amendments should be made.

However, Government needs to seriously consider land sizes and use whether owned by Malawians or foreigners so as to avoid concentration of land in a few hands. In this respect, legislation should put a ceiling on the amount of land that individuals or companies may be allowed to hold depending on their investment needs and capacities. On the other hand, there should be rigorous monitoring of idle land so that such should be made available to the landless. Leases falling in or non compliant leases would free up land to cater for the

¹¹ Alastair Bradstock (2005) Land Reform and its Impact on Livelihoods: Evidence from Eight Land Reform Groups in the Northern Cape Province of South Africa

landless. Legislation could promote public monitoring and reporting by stipulating that providers of information on defaulting leases would have the first option to buy the land when it is forfeited.

Finally, a concern may be raised as to whether abolition of freeholds will amount to retrospective application of legislation and therefore susceptible to challenge. Our view is that any such legislation will merely change existing property rights and would come within the purview of the Land Acquisition Act. The effect of the legislation will be to take away a larger interest (freehold) and substitute therefore a smaller interest (leasehold). This would constitute a 'taking' of property rights and would have to comply with section 28 and other due process provisions of the Constitution such as section 43. Government will have also to satisfy the requirement that such a 'taking' is in the public interest. If respective legislation were wholly illegal, Government would have no power to restructure its landholding system, contrary to the concept of sovereign power.

4.1.4 Land Access to Foreign Companies

The Land Policy provides that the restrictions to holding freeholds shall extend to foreign companies. It may be necessary to define what a foreign company is. The Companies Act does not define this term. The Act however defines an external company as a company registered outside Malawi but with an established place of business in Malawi. Thus external companies will be covered by the Land Policy. Many companies that may be classified as foreign are registered in Malawi but the owners or those in control are not Malawians.

According to the Land Policy formulation, foreign company includes 'foreign share ownership'. The Land Policy therefore needs to stipulate how much foreign content in a company will trigger the expropriation procedures envisaged by the Policy. The normal requirement would be majority shareholding. However, the corporate entity, being such a versatile and flexible tool for investment may be used in ways that may easily escape the attentions of the administrators of the proposed legislation.

There are various mechanisms such as the use of trusts through which some non Malawian persons or families are able to acquire a multitude of properties, many of which are idle and are held for speculative purposes, without the Government noticing the concentration of property in a single family. Government needs to consider putting a ceiling on the number of properties that individuals, families, companies or organizations of any kind may own. This will assist in checking speculative holding of property, especially by non Malawians, which in some cases stifles development of such land.

Further, it is not clear from the Land Policy how Government is going to deal with the transfer of shares taking place on the Stock Exchange and which therefore will of necessity determine the foreign content of some companies. The Land Policy states that: -

Subject to existing transfer laws, non-citizens already in possession of registered freehold assets of publicly traded corporations shall be permitted to transfer such assets to other non-citizens only when deemed necessary to preserve the investment value of these companies.

It is not clear, for example, at what point a transfer will be “*necessary to preserve the investment value of these companies*”. There is need therefore for further study on this point. Government may end up increasing bureaucracy to catch the few non-Malawi nationals to very little effect. Indeed unless a properly thought out legislative regime is enacted, there will be so much conflict between sectoral legislation that not only will the system be cumbersome to administer but it will instill uncertainty and cast doubt on the liberalized economy that the country is building.

4.1.5 *Land Use Planning, Registration and Administration*

The Land Policy proposes to extend land use planning to all urban and rural areas throughout Malawi. It states that:

Land use planning will be extended to all rural and urban land, including freehold, leasehold and customary estates. However, the declaration of a planning area will not automatically require the conversion of all customary land to public land, as has been the practice prior to this Land Policy. Instead, all landowners in such planning areas will be required to comply with approved planning and development regulations.

The proposal to extend planning to all rural and urban land is very welcome and long overdue. Due to lack of planning in rural areas and the peri-urban townships there is poor sanitation and infrastructure making such areas unattractive and environmental hazards. The challenge however is to find the necessary resources and capacity to implement the decentralized planning and registration system. Government should initiate urban renewal programmes to address urban decay and squalor.

4.1.6 *Registration of Customary Land*

The Land Policy proposes to register all customary land in Malawi. It stipulates that:

1. The Government will allow all customary land to be registered and protected by law against arbitrary conversion to public land. The traditional supervisory role of chiefs, clan leaders, headpersons and family heads in land matters will be formalized and streamlined to allow uniform administrative procedures and transparency in all customary land transactions.

2. All customary landholders, defined to include entire communities, families or individuals will be encouraged to register their holdings as private customary estates with land tenure rights that preserve the advantages of customary ownership but also ensures security of tenure.

3. Private leasehold estates shall be created as subsidiary interests out of any private land, including registered customary estates without relinquishing the ownership of the customary landholder. This provision will allow traditional leaders, family heads and individual holders of registered customary land to grant leases.

The process of registering customary land so as to give title to its holders in the rural areas may provide certainty in sizes of holdings, instill a sense of ownership of land in rural folk and provide opportunity for using such land as collateral in appropriate cases for investment. It is noteworthy that such projects have been tried here in Malawi before and other countries in Africa with limited success. In Malawi the *Ndunda* system of customary land registration implemented in the Lilongwe Land Development Programme is a good example. A number of valuable lessons have been learnt from these experiences to which Government must pay attention. It is therefore necessary to plan this process carefully so as to ensure there are adequate resources to carry the process forward without too much reliance on donor support.

Registration of customary land should however not be a precursor to customary land taxation. There is the possibility that Government may want to recoup the costs of registration of customary land by taxing the holders of such land. This will be very detrimental to rural development and should be avoided in the implementation of the policy

4.1.7 *Gender Considerations*

The need to tackle gender issues in land and property rights is now widely recognized in the debates for land reform. Land is one of the most important factors of production for agrarian economies in Sub Saharan Africa. Access to land and control over it are essential aspect of its utilization and productivity. Statistics world wide attest to the fact that women form just over half of the world's population, they perform 2/3 (60%) of the world's working hours and 50% of the agricultural production and processing¹². Given the central role women play in agricultural production, it is without doubt that lack of protection of their rights on land and secure access to land has direct implications for investment in agriculture and efforts to promote land reform for agricultural productivity.

In Malawi, 52% of the population comprise of women of whom 93 % live in rural areas. Of these approximately 85% are primarily involved in subsistence agriculture¹³. They play a very important role in food production and management and are critical to food security in the rural areas. In a number of cases, however, women are marginalized in decision making pertaining to land resources. Their knowledge and experience is not utilized in land use and management yet they are critical stewards of land resources.

Legislation needs to take positive steps to recognize the critical role that women play in rural development and that it is important that in allocating land, the relevant authorities must pay specific attention to the needs of women including their marginalization.

Further, when creating institutions dealing with land resources especially in the rural areas, due consideration must be given to representation of women in those institutions. Hence in making appointments to land tribunals or committees envisaged under the Land Policy, a minimum threshold for women representation should be prescribed in the relevant legislation.

¹² Margaret Rugadya (2004) Land and Tenure Security and Linkages with Poverty: Dimensions of Land Rights (Associate for Development, Uganda)

¹³ Sue Mbaya (2002) HIV/AIDS and its impact on land issues in Malawi Shere View Lodge, Pretoria

The issues of women's access to land, land rights and gender concerns are of critical importance, not only to the land reform process but also to wider poverty reduction strategies, through both production and social welfare impacts¹⁴.

4.2 *Review of Land Legislation*

4.2.1 *Structure of Land Law*

The country's land law follows a pattern that is common in the common land jurisdiction¹⁵. Primary land law covers subjects such as tenure regimes, land administration, control mechanisms and dispute resolution. The Land Act, 1965 provides for almost all these except dispute resolution mechanisms. Almost all these are administered by the institution responsible for land matters.

The Land Act is supported by other legislation addressing specific aspects of land holding such as tilting and registration, surveys, town and country planning and land acquisition. Legislation such as the Registered Land Act, Adjudication of Title Act, Customary Land (Development) Act, Land Survey Act, the Local Land Board Act, and the Land Acquisition Act are in this category.

Then there are land use management laws which are sector specific. These include legislation governing water, electricity; forestry, mining environment and administrative justice and local government are in this category.

The legislation outlined above are not usually administered by the institution responsible for land matters and this often leads to gaps and conflicts that adversely affect well meaning provisions. It is also important to mention that a large part of land law is found in the common law and doctrines of equity (judge made) that provide the framework for interpreting the statutes. This poses problems for lay people to access land law and requires legal expertise.

The main thrust of our land law is reflected in two features: the state as supreme authority (eminent domain) over land and transformation of customary land relations into the received land law. The nature and form of customary has changed therefore mainly reflecting received land and property law. Hence a land market under customary law is developing where there was previously none. The challenge seems to be the identification of customary law amidst the dominance of received law as well as the changing socio-economic and political landscape that shapes customary law.

¹⁴ Joan Bosworth 2003 country case study – Uganda: “In Land Policy and administration” World Bank Institute 2003.

¹⁵ See generally L. A Wily & S. Mbaya (2001) *Land People and Forests in eastern and southern Africa at the beginning of the 21st Century: The impact of land relations on the role of communities in forest future* (Nairobi, IUCN-EARO).

4.2.2 *The Constitution and Land Law*

The Republic of Malawi Constitution vests all land and territories of Malawi in the Republic (section 207). The Constitution further provides every person the right to acquire property and prohibits arbitrary deprivation of property (section 28). The right to acquire property must be read together with the non-discrimination provisions of the Constitution such as section 20. Further, the right to acquire property is subject to the power of Government to compulsorily acquire property so long it follows due process and pays compensation which is fair. The constitution also gives every Malawian right to economic activity, to work and pursue a livelihood anywhere in Malawi (section 29).

In addition the Constitution provides for a right to development which requires Government, *inter alia*, to introduce reforms aimed at eradicating social injustices and inequalities (section 30). These provisions provide the foundation for developing a basic land law and the specific issues that it must address.

4.2.3 *The Rights Based Approach to Land and Food Security*

Ownership, use and management of land have gone through several shifts in the last century. Authority and control over land has moved from community to state and as society has been monetized land has become a commodity detachable from the inhabitant or the tiller and tradable in the market. In addition, distribution of land has become less even¹⁶, as the rich and powerful have amassed more land causing landlessness to the poor and vulnerable. Paradoxically, it is the poor and the vulnerable that need land more than the rich since the former have no other alternative means of production; such that landlessness is the best evidence and perhaps major cause of poverty in general and food insecurity in particular.

The English conception of land is that people do not necessarily own the land itself but that they hold interests in land; even seemingly absolute and exclusive land rights such as freehold titles are merely forms of holding that denote the type of interest that one has in the land. Thus under English land law the crown is the owner of land and the rest hold interests of varying duration in that land. The principle of *eminent domain* that provides state supervision over land has been imported into Malawi law. In the Malawi Constitution, section 207 provides a curiously worded reflection of this principle. It states that subject to the Constitution, all lands and territories of Malawi are vested in the Republic. In international law the Republic of Malawi denotes the state of Malawi that comprises the territories and people of Malawi. Legally, the state cannot be vested with land; rather the land would be vested in the Head of State.

The vesting of the land in the Republic seems to be an expression of the fear of what the heads of state can do to land when it is 'in their name'. Section 207 is therefore more of a political statement rather than a legal provision. It needs to be given legal force. The Law

¹⁶ Alden Willy, L & S Mbaya (2001): *Land, People and Forests in Eastern and Southern Africa in the 21st Century. The Impact of Land relations on the role of local communities in the forest future* (Nairobi, IUCN-EARO). Page 75

Commission has proposed that the land and territories be vested in the Government¹⁷. We disagree on the ground that the political statement that the framers of the Constitution had in mind is important save that the land should be vested in the people of Malawi and, if legal technicality must be adhered to, then we should vest all lands in the President as Head of State on express trust for the people of Malawi. The people are therefore the chief landlord and everyone else would be the tenant of the people.

What is significant however is to provide mechanisms for local ownership, control and management of land. The first step would be to vest all the categories of land in appropriate authorities. Hence customary land, the largest category, should be defined territorially and vested in traditional authorities as trustee for the people in their jurisdiction¹⁸. This would entail removing the sweeping powers the Minister responsible for lands under the Land Act and which significantly led to unsustainable depletion of customary land resources through leaseholds granted to middle classes from the 1970s to the early 1990s. These leases are currently largely idle and rural landlessness is increasing.

The law should also deal with customary tenure in that though the Land Act defines customary land as land that is held in accordance with customary law applicable where the land is located, there is little customary law that actually regulates customary land. In essence customary land can be accurately defined by the fact that its regulatory framework is *informal*, rather than customary law¹⁹. This informality provides ammunition for unscrupulous land dealers and state officials to exploit the vulnerable and the poor. The only enduring feature of customary land tenure is its communal reference²⁰. Here then lies opportunity to develop a workable tenure arrangement together with the local communities. The decentralization process offers a chance to put a system in place that can combine written local rules and some informal governance structures on customary land.

In addition to tenurial arrangements, mechanisms should be put in place to control wide disparities in land holdings. Hence while the National Land Policy and the Land (Amendment) Act 2003 concentrate on restricting ownership of land by non Malawians and prohibits them from holding freeholds, these non Malawians have the legal right to hold large pieces of leasehold land up to 50 years, in some cases merely for speculative purposes. Yet landlessness among Malawians is increasing and there is very little attempt to redistribute land. The tenure restrictions are merely political gimmicks intended to win political sympathy but have little to do with making land available to the landless²¹.

Under the Malawi Constitution as in many others the right to land is expressed or subsumed in the provision protecting private property in general. Section 28 states that every person

¹⁷ Malawi Government (1998) *Law Commission Report on the Technical review of the Constitution*, Malawi Government Gazette, General Notice Number 230, page 326

¹⁸ This a recommendation of the Presidential Commission on land made in its report in 1998 but the Malawi National Land Policy, 2002 has not adopted.

¹⁹ Alden Willy, *supra*, page 77.

²⁰ On the other hand, the informality has advantages in that rules change according to societal needs and have acceptability and adherence from the community.

²¹ It should be observed that the only initiative intended to distribute land to the landless is a project of the World Bank called the Community-Based land Redistribution Project. There is no national process to redistribute land and no budgetary allocations are made towards this process.

shall be able to acquire property alone or in association with others and that no person shall be arbitrarily deprived of property. This embodies the market access to property and does not deal with redistributive aspects of property such as land. Section 30 (2) of the Constitution comes close to dealing with the redistribution of land in that it imposes an obligation on the state to provide equality of opportunity for all in access to basic resources. Although basic resources are not defined, land clearly is a basic resource and in that regard, Government has an obligation to provide equal opportunity for all in access to land.

In addition, since equality of opportunity of access to food is expressly provided for and land resources are an essential component of food production, Government must put the constitutional measures for promoting equal opportunity for access to land including introducing reforms aimed at eradicating social injustices and inequalities. No doubt such reforms should include land redistribution and providing for ceilings regarding the amount of land that one can be allowed to hold considering the use, investment and capacity of the person or entity in question.

Again this analysis shows that to arrive at a constitutional right of access to land one has to go round several bends; this is not conducive to an enabling policy and legal framework to protect basic human needs such as land. There is need therefore for a clear constitutional provision giving the right of access to and specifying government responsibilities, the details of which can be provided for in basic land legislation.

4.2.4 Titling

Title to land is critical. Not only does it determine ownership and therefore eliminate possible conflicts between holders and claimants, it also determines investment patterns and, in some ways, its management. Thus the duties, rights and responsibilities of various stakeholders are intimately related to title. Title determines security of tenure and therefore one's long term responsibilities and planning. This principle applies to all categories, namely, customary, private or public land.

While the Land Act, 1965 clearly defines customary land, it fails to clearly articulate the rights and responsibilities of the holders of such land. The Act vests title in customary land in the President as trustee for the people of Malawi. This of course is somewhat at odds with the Constitution which vests all land in the Republic of Malawi, the state. Vesting of land in the Republic is too general and may be questioned on ground that a state as compared to a Government is not a legal entity on which land can be vested. That is perhaps why the Land Act, 1965 had vested customary land in the President as head of state. The Presidential Commission proposed that customary land be defined territorially and be held (not owned) by traditional authorities on trust for their people.

The National Land Policy proposed that customary land be registered. This of course will reduce land conflicts and enhance certainty in land transactions. The Policy also proposes measures to ensure that registration does not lead to landlessness as new title holders may readily sell their land. Legislation needs to specifically provide for this and empower local committees responsible for land to control such transactions.

4.2.5 *Defining customary land*

On the other hand, the Land Act definition of customary land is localized. Customary land is defined as 'owned' under customary law, and customary law is customary law applicable in the area concerned (section 2 of the Land Act, 1965). While this definition ensures that customary land is community owned and managed this has not prevented 'strangers', including Government, from invading this community based resource to the extent that an order had to be issued to stop leasing of customary land in some areas²². If however the localized nature of customary land is strictly adhered to it might be considered discriminatory on grounds of tribal or some such origin and run foul of section 20 of the Constitution. How to resolve the apparent dilemma? We should retain the community based approach but ensure that community control and management are protected and facilitated. Although state supervision of such land is essential, but the sweeping ministerial powers provided under sections 25 and 26 of the Land Act completely watered down community based management. These provisions may be repealed in accordance with draft amendment legislation.

The registration of customary land as proposed by the Land policy will consolidate private ownership of customary land. This is a trend which has been observed by many researchers in recent times. Customary holdings are becoming more and more individualized, in some areas there is thriving customary land markets where sales, leasing and tenancies are common place. Perhaps these are the new customary regimes developing and the law needs to take cognizance of these changes. Registration will formalize these changes and provide certainty and protection to players in the land market. Of course the law must provide protection to holders of customary estates; they should not be allowed to sell land in the same manner they sell cattle. Local institutions proposed under the Land Policy can be empowered to regulate land markets at that level. The customary status of this land will not be lost if local institutions are given regulatory powers through subsidiary legislation to promulgate customary norms in accordance with evolving social and cultural norms.

4.2.6 *Land use and management*

The only provision that provides for use and management of land in the Land Act is section 31. This is an enabling provision giving the Minister power to make regulations for use and management of land of any category. However, the only regulations made so far are in respect of leases for which government apparently feels responsible. Hence that Land Act Regulations, the Control of Land (Agricultural uses) Control Order and such other regulations provide for the use and management of leaseholds and control orders for specific areas or development projects, but not private land or customary land in general. This is a major anomaly that needs to be revisited. Though regulatory powers in section 31 provide flexibility to the regulatory authorities, so much of land use and management is well established and should be concretized in a piece of legislation such as a Land Use and Management Act that should cover all categories and usage of land.

²² See Control of Land (Agriculture Leases) Order, 1990

The Town and Country Planning Act is a major complementary legislation to the Land Act. It provides for zoning, development control and designation of special areas. The National Land Policy proposes that the whole country be designated a planning area, so as to eliminate the existing gap that planning regulations only apply in designated areas. The problem for the regulator is that they had to move with the developer or investor's interest. The Environment Management Act on the other hand provides for environmental impact assessment, audits as well as declaration of protection orders where the Director is of the opinion that environmental degradation is threatened. However the relationship between land allocation, administration, planning and development control including the relationship between the responsible sectors is far from clear. This has led to situations where Department of Lands has allocated land to an individual who proceeds to develop without planning permission or EIA as the case may be. The new legislation must eliminate this loophole by specifically providing that land allocation or grant is not a license to develop and that such is or may be subject to EIA or planning permission, as the case may be. Such provisions should also be inserted in lease agreements or land grants made by Government.

4.2.7 *Land Finance*

The quest for orderly development of land will be of little use if there are no facilities for financing that development or infrastructure. For this reason land law must regulate and facilitate the financing facilities available. While market forces are the determinant of finance, some measures need to be introduced to ensure that both providers and users of finance are treated fairly. For this reason, there is need for revision of provisions of mortgage finance under the Registered Land Act and possibly the Building Societies Act.

In particular, the circumstances under which a mortgagor may repossess properties are too stringent and do not differentiate between dwelling properties or business assets. We propose that the law should differentiate between the two uses. Currently the only difference is that interest rates for dwelling properties are slightly lower than those for business, but even this is not a statutory requirement. In addition the right of a spouse who contributed to the acquisition of mortgaged property but whose name does not appear on title documents should be protected by legislation.

On the other hand, consideration should be given to creating a ceiling for recovery of interest to promote social and economic development and poverty reduction in particular. The guiding principle should be that once a finance house has obtained an appropriate return on its investment, interest on defaults should not be *ad infinitum*.

4.2.8 *Land Inheritance*

The Land Act does not provide for inheritance of land, hence inheritance issues must be dealt with under the Wills and Inheritance Act. The latter Act mentions land only in passing (such under section 62 dealing with small estates), and treats it as any other property. In addition, the Act does not apply to customary land, ordinarily because of its non transferability. The question is whether land law needs to deal with inheritance of land separately. The main argument for taking land inheritance out of the Wills and Inheritance Act may be that land is so critical to livelihoods and poverty reduction that it deserves separate provisions intended to take special recognition of the vulnerable and the

disadvantaged such as women and children. Of course this does not answer why such provisions cannot be made under the Wills and Inheritance Act. However, the local institutions proposed under the National Land Policy may be well placed to deal with land inheritance and since their powers and responsibilities will be dealt with under the new land legislation, it should be that legislation which should deal with land inheritance.

It is worth noting that recent amendments to the Wills and Inheritance Act have made significant strides to strengthen enforcement machinery to curb property grabbing. Fines of up to K20, 000-00 can be imposed for violation of the Act. In addition the Act provides for the appointment of Special Prosecutors to operate at local level who can take up matters on their own cognizance without waiting for claims or complaints. This machinery can be used under a new land law, since the Special Prosecutors can be empowered to prosecute 'land grabbing' claims.

It is important to mention that the scheme of inheritance under the Wills and Inheritance Act is too complicated for local use and it is an open secret that this Act is honoured more in breach than compliance. Unfortunately the breaches have dispossessed many and contributed to landlessness and deepening poverty levels. Hence the need to seriously consider separate inheritance provisions under the new land legislation to be administered by local bodies. It will be important however to bear in mind the difficulties of creating an omnibus inheritance scheme that can work well in all cultures as the Wills and Inheritance Act does. Perhaps it may be necessary to devolve regulatory powers to land committees; the land legislation should only apply where local ones are not available.

4.2.9 Land and decentralized institutional framework

The proliferation of community based natural resources management institutions is a cause for concern. Forestry, fisheries, water and land have or propose to have local institutions for resource management that often target the same people. This duplication of committees needs to be eliminated. On the other hand, the National Decentralization Policy and the Local Government Act provide for development committees at village, area and district level. Integrating land related institutions into this decentralized management system offers the chance of cross sector co-ordination and efficient utilization of human resources at local level. In addition, the decentralized framework should provide for access to information at that level available in the vernacular of the area concerned. Finally, the new land legislation should clarify the roles of assemblies and traditional leaders over land administration since they seem to overlap in a number of cases. This will avoid unnecessary duplication and conflicts.

4.2.10 Cross Sectoral Management

There has generally been lack of co-ordination between the institution responsible for land and other sectors that use land. An often-quoted case is the forestation clause under the Land Act Regulations, which imposes an obligation on holders of government leases to put 10% of their land to forest. This clause has not been enforced yet the mechanism for enforcement is quite flexible since proof of non-compliance with any lease covenant entitles Government to forfeit the lease. The lack of enforcement may be due to the perception in the institution responsible for land that forestation is not their core function. On the other

hand, the National Forestry Policy, 1996 provides that the Director of forestry shall enforce the forestation clause in consultation with the institution responsible for lands. This provision is however not reflected either in the Forestry Act or the Land Act and does not seem to be operational. The new land legislation needs to devise a workable mechanism to ensure that institutions can harmonize their work programs and either develop and implement joint management or outsource services that it cannot provide in-house to ensure that cross sector issues are dealt with.

4.2.11 Dispute Resolution

Disputes over land whether during registration process or after need to be resolved at local level first before going through the formal judicial process. The new land law should provide for mediation, reconciliation and arbitration using the local land institutions. Moreover the jurisdiction of magistrate courts in land matters needs to be expanded since the current status compels parties to travel long distances to lodge claims in High Court registries in Blantyre, Zomba, Lilongwe and Mzuzu only. Under section 39 of the Courts Act a magistrate court has no jurisdiction to try or determine any matter if title or ownership to land is in issue. The only exception is if the land in question is registered land and its value is not more than K400.00 (see section 156 of the Registered Land Act). Clearly this limitation in jurisdiction is not justifiable in current economic circumstances. At the time this law was passed in 1967, £200.00 was a lot of money. This needs to be progressively adjusted. Moreover the jurisdiction should be extended even in relation to unregistered land. Finally, it is worth noting that while traditional authorities can and should facilitate alternative dispute resolution mechanisms, they can not exercise judicial functions since that will offend the constitutional principle of separation of powers because they exercise executive functions. Further, at customary law, traditional authorities are trustees of customary land. They cannot therefore sit in judgment over competing interests of their beneficiaries.

5.0 Agrarian Reform strategies

For several decades, the growth strategy in the agricultural sector was built upon dualistic structure with a class of estates owners/leaseholders one side and the smallholder sub-sector on the other hand. The groups had been differentiated according to a variety of social economic conditions and regulations concerning production, marketing, pricing and land tenure.

The post-independence agricultural strategy centred on food self-sufficiency and rapid economic growth through enhancing smallholder productivity. As a result, food sufficiency guided sectoral strategies, programmes and action plans. The policies emphasized on maize production even in areas deemed unsuitable and where maize was not a staple crop.

The administrative machinery which administered the post-independence strategy was characterized by a policy making body headed by a permanent secretary, under whom were supervisory and technical support structures at the Regional Agricultural Officer and technical, support and implementation structures at the district and sub-district levels (headed by a District Agricultural Officer). This structure was what gave way to what was called the Integrated Rural Development Projects (IRDP) in the 1960s and early 1970s.

Under the IRDPs, the projects were conceptualized and implemented in a multi-faceted approach that brought together basic facilities and services such as markets, rural access roads, land conservation, works, and health services. The major problems associated with this structure were that the decision making approach was top-down without any consultation with other stakeholders. There were legal and institutional arrangements regarding crop production, marketing and pricing arrangements and land tenure systems that differentiated small-scale from large-scale farmers²³. The IRDP approach was costly and therefore difficult to sustain.

The National Rural Development Program (NRDP), which was implemented starting from 1978, evolved from IRDP in an effort to address the weaknesses identified under the IRDP. Unlike the IRDP, the NRDP concept focused on the needs of the poor farmers throughout the country whilst not completely forgetting the better resources endowed farmers. The aim of the NRDP was to shift the emphasis from the major capital-intensive projects concentrated in areas of high developmental potential in a bid to ensure broad-based equitable growth in the sector.

Following the economic crisis experienced in the late 1970s resulting from external shocks such as rising interest rates and fuel prices, droughts, regional political instability and deteriorating terms of trade, the government implemented Structural Adjustment Program (SAP) whose primary objectives include:- stabilizing the economy; accelerating agricultural growth; diversifying the export base; increasing efficiency of import substituting enterprises and parastatals; and improving the mobilization and management of public resources²⁴.

Specific sectoral programs covering periods of three to five years were also used to implement some policy changes during the period of structural adjustment program such as Agricultural Sector Adjustment Credit (ASAC) and Agricultural Sector Assistance Program (ASAP). The former was implemented with support from the World Bank and the latter was supported by USAID²⁵.

The Agricultural and Livestock Development Strategy and Action Plan (ALDSAP) of 1995 were aimed at accelerating broad-based agricultural and rural development program as a major element to reduce poverty and food insecurity among the poor and vulnerable groups. Other objectives of the strategy included expanding and diversifying agricultural and livestock product exports and raising farm income.

The various agriculture reforms of the 1980s and 1990s led to market liberalization including repeal of restrictive legislation on production and marketing. The liberalization itself however has led to new problems in relation to input price market access. Traders and middlemen, many of whom are politicians and elites, have benefited often at the expense of smallholders farmers.

²³ The Agriculture Development and Marketing Corporation Act, the Special Crops Act were some of the pieces of legislation that provided the regulatory environment and restricted production and marketing of certain crops.

²⁴ Malawi Government (2002) Working Paper on Vision and Strategy for the Agricultural Sector in Malawi (Lilongwe)

²⁵ Malawi Government (2002) Working Paper on Vision and Strategy for the Agricultural Sector in Malawi (Lilongwe)

5.1 Access to Agricultural inputs

Use of fertilizer and improved hybrid seed by the majority of farmers, especially smallholders, has been extremely low. There is evidence that if farmers have improved access to fertilizer and seed, agriculture productivity increases. For example in 1998/99 and 1999/2000, Malawi experienced bumper harvests, among other things, due to the Starter Pack program which distributed free seed and Fertilizers packs to the farmers; and other credit programs. In the last decade however it has also been recognized that the government control in input supply system has neither been efficient nor sustainable. The key issues, which relate to supply are availability, distance to supply points, timeliness of supply and affordability.

The majority of the smallholder farmers' access to fertilizer and improved seed is through credit. However, financial institutions are reluctant to lend to the agriculture sector due to the inherent risks of farming, lack of collateral and high default rates. In addition, access to credit is being hampered by high inflation and interest rates currently prevailing in the economy. There are changes that were instituted to address the problems and some of the changes include: reduced government direct intervention, elimination of monopoly privileges of parastatals, reduced and elimination of subsidies on inputs; and liberalization of input prices and relaxation of controls on private firms. These changes were aimed at developing an input supply system that would ensure, input supply sustainability; delivery of inputs at least possible cost and ensures broad reach of input to the farming systems. Ten years after liberalization, it is evident that the expected benefits of the liberalization of both inputs and outputs markets has failed to penetrate the rural remote markets.

5.2 Research and Extension Services

Although agricultural research institutions have developed agricultural technologies, there is generally low adoption by smallholders because of high costs of technology and inadequate linkages between research and extension. The technology generation process does not involve stakeholders or beneficiaries and therefore not demand driven. Some of the technologies developed do not address the actual prioritized needs of the beneficiaries. There is need to encourage researchers to develop technologies being demanded by the farmers through involvement of stakeholders in problem identification and promotion of participatory approaches in extension programme design.

5.3 Market and Trade

Agricultural productivity has been hampered by problems with the marketing system particularly lack of adequate markets, poor market information systems, inadequate rural feeder roads, low price for produce and high price for inputs. The constraints need to be addressed by encouraging the commercial sector to develop improved marketing systems. In addition, there is need to advise farmers on how to select and grow more marketable products and how to improve the marketing of their products through improved extension.

Most farmers especially smallholder farmers and agro-processors have very limited access to information on local and international markets. They do not have knowledge on quality,

quantity and type of products to be produced for the specific markets. Extension systems focus on production rather than marketing information and are not providing marketing support to framers. Private traders have not filled the gaps left by the withdrawal of ADMARC from various commodity markets. The domestic market is very limited in size and generally not quality conscious. There is little incentives and financial support for the private sector to invest in agro-processing to add value. Most of the smallholder farmers do not directly get involved in the marketing of their produce due to lack of producer organizations.

6.0 Stakeholders Analysis

6.1 Land Users

Land users in Malawi can be categorized into; smallholder and commercial farmers, Government and private sector. The smallholders and commercial farmers are the primary users of land in terms of agriculture productivity. Smallholder farmers form the largest percentage of the country's land users. However, most of the smallholder farmers are very poor and have very small land holding sizes. It was revealed during the stakeholder's consultations that land-holding sizes for smallholders have reduced to an average of 0.5 ha over the years. This reduction is mainly due to the increase in population and also promotion of estate agriculture at the expense of smallscale farming. The smallholder farmers are the most land insecure in the country. The problem is more pronounced in the southern region of the country. It is however important to note that smallholder farmers are main producers of Malawi's staple food; they produce not on basis of market conditions but necessity.

Estates are large commercial farms producing input-intensive cash crops and dependent on cheap paid labour or some kind of sharecropping arrangement. Commercial farmers in Malawi have been mainly involved in tea, tobacco and maize production. Most of these crops are grown for export and for cash within and outside the country. This category of land user has access to credit such as access to cheap land through conversion of customary land into leasehold for estate farming. This robbed smallholders, hectares of land. The situation was aggravated when smallholder farmers were barred from growing high valued crops like burley tobacco. This reduced the income levels for smallholder farmers and their interest in agricultural farming. Commercial farmers own large hectares of land, yet most of the land is not even put into farming. Recently a number of commercial farms have been abandoned or sold by the owners. The prices for agricultural produce have been going down especially for tobacco despite the production cost and high prices of inputs like fertilizers, seeds and chemicals.

Another key land user is the Government. It has been involved in several activities on land and land related issues. Government uses land for public infrastructure like schools, health centres, roads and many more developments. It is also the main player in policy initiation, formulation and implementation. In the 1970s and 1980s, Government owned and operated agriculture schemes in various parts of the country. Government has however withdrawn from involvement in agriculture production except in research activities.

6.2 Policy Makers

The main policy makers in Malawi are the executive and legislator. In land matters, the Ministry of Lands, Physical Planning and Surveys has been responsible for drafting and implementing the Land Policy and reform programs in Malawi. The National Land Policy is a product of the Presidential Commission of Inquiry on land, which was commissioned in 1996 and produced its report in 1999. The report is an in-depth analysis of land problems in Malawi; however, the policy did not adopt all the recommendations contained in the report. One of the main concerns of stakeholders is that there is too much reliance on donors in policy formulation and implementation process as a result land matters do not feature in the national budget.

This clearly makes land reform donor dependent and compromises the sustainability and internalization of the land reform programs. There is also inadequacy of technical capacity in the Government to successfully implement a land reform program. Currently, government personnel are being trained in land administration with funding from the World Bank; yet a number of Land Reform Projects are underway in the country. The involvement of the legislature in policy making is minimal; hence where a policy can be implemented without legislation then they can be by-passed. They are however responsible for law making and are therefore critical stakeholders before any policy can become law.

6.3 Support Services

The World Bank is the main donor providing financial support to the land reform program in Malawi. DFID and the European Union have also provided support in the implementation of the land reform program. Stakeholders expressed the view that financial support should not be channeled to government alone; non-government organizations and community based organizations involved in land and agrarian reform programs have an equally important role to play. These organizations have well established networks with communities and they are well conversant with the community's land problems. In addition, financial support to land reform programs should include infrastructure development such as health centres, schools, roads, which are critical to promote uptake of technologies, market and input access and thereby facilitate productivity of land.

The role of the media in examining land reform and educating the public and policy makers is vital. Unless print and broadcast journalists take the time to acquaint themselves with the crucial role that land reform can play with respect to development and political stability, it is unlikely that sufficient attention can be generated from the general public or from the political leadership to mobilize the political will or required resources. In the formulation of the National Land Policy adopted by Cabinet in 2002 and the ongoing Draft Land Law, the media has been very instrumental in reporting and informing the general public on land and land related issues in the country. However, the media should explore the key role of land and agrarian reform with at least as much attention is paid to vital issues like AIDS or politics. Beyond that, they should grasp and translate for the broader public the vital linkages between land and agrarian reform to employment creation, food security, accessibility to agricultural inputs, landlessness and other related issues.

The civil society organizations have been involved in land and land related matters since the commission of inquiry into land was commissioned in 1996. A number of NGOs have

expressed their concerns on how the land reform is being carried out in the country. For example, they are concerned that there is very limited capacity by the Government to conduct a land reform that is pro-poor and capable of addressing most critical issues of food insecurity, employment creation, infrastructure development etc. In this regard, there is need for government to partner with these civil society organizations to maximize the benefit of land reform initiatives to local communities. Civil society organizations have established strong links with communities involved in land reform²⁶. They are important in supporting rural and urban development and land reform policies. Organizations like Farmers Union, Total Land Care, LandNet Malawi, NASFAM, Civil Society Agricultural Network (CISANET) and many other organizations have been involved in land matters with local communities. Implementation of the land policy will require significant support of these organizations and participation by the broader civil society. The successful implementation of the land policy would require: -

- Strengthening relationships between government and NGOs. The recognition of the advocacy role of NGOs by government should be strengthened. Conversely NGOs need to strengthen their role in supporting government with actual implementation;
- Strengthening the role of political representatives (in particular parliamentary representatives) is very critical in land reform program;

6.4 Land Administration

Government Departments

The Ministry of Lands, Physical Planning and Surveys is the principal authority responsible for land administration in Malawi. One of the biggest challenges the ministry is facing is inadequate staff to handle land reform matters. The Ministry needs to train more land administrators and also engage with civil society organizations. The Ministry of Agriculture is responsible for promoting agriculture development and has research, land resources conservation and extension departments. Land reform does not however seem to be specifically linked to land productivity. There are no clear strategies on poverty reduction and other similar concerns, or responsibilities to ensure that land reform addresses these issues considering that often the department responsible for land reform will not be responsible for land productivity issues.

District Assemblies

District assemblies in Malawi are involved in land administration especially in the allocation of land and identifying unallocated land for resettlement. The District Lands Services Office has been delegated by the District Assembly to be the coordinating point among land sector institutions and land sector agencies e.g. agriculture, forestry, environment as well as NGOs and Community Based Organizations (CBO). It serves as a link to the sub-districts and

²⁶ M. Adams (2004) A Review of DFID's Engagement in Land Reform in Malawi (DFID, Lilongwe). See <http://www.sarpn.org.za/documents/d0001664/index.php> accessed on 01/18/2006

national coordination points²⁷. Consultations with the district Assemblies revealed that though they have been given the mandate to coordinate land matters in the district, the officers have very little powers and in most cases they are given orders by central government on what to do. With the decentralization program in place, it is hoped that the district assemblies will be more independent in conducting their work. On the other hand there is need for more lands officers with broad skills and knowledge in land matters.

Traditional Authorities

Traditional Authorities play a key role in the development of their respective areas as they exercise a lot of influence over mobilizing people to participate in various developmental activities. Apart from taking the lead in the development activities as chairpersons of Area Development Committees (ADCs), TAs also act as custodians of cultural and traditional values and carry out quasi-judicial functions. Land is often under control of traditional leaders ensuring authority over land is passed in succession from one generation to another. Disputes over customary land, are mainly settled by the traditional leaders. The Land Policy proposes that the traditional authorities will be the coordinating point and the Land Clerks will be deployed in every traditional Authority to facilitate land registration once instituted. The traditional leaders are however worried with land registration saying that it would: -

- reduce their powers;
- abolish customary land after all customary land has been registered;
- facilitate corruption when carrying out registration since some opportunistic individuals will want to take advantage of the survey and titling process to extend their boundaries;
- severely hamper equitable access to land for vulnerable groups since those registered will not provide for these groups;
- intensify conflicts among children and dependents; and
- compromise the resettlement programme.

7.0 Key Emerging Issues

7.1 Land Resettlement

A World Bank funded Community Based Rural Land Development Project is being implemented in the districts of Mulanje, Thyolo, Machinga and Mangochi. The component on Land Acquisition and Farm Development (LAFD) provides resources and facilities for a group of farmers to come together to buy a farm and develop. Each farmer is allocated a plot and resources to develop the plot. The project is aimed at resettling landless people in

²⁷ Malawi Government (2004) Malawi Land Reform Programme Implementation Strategy (2003-2007) (Lilongwe, Malawi)

these districts who have nowhere to farm especially smallholder farmers. This is a pilot project intended to provide lessons and may be replicated.

The people who were consulted cited that land resettlement is temporal measure to ease population pressure in areas where land seems to be a problem. It was observed that Malawi is highly populated, even if the land, that is under estate farming was to be reallocated to the landless, the country will still have people without land for farming. The population that has no land is higher than the available land in the country. Hence there is need for strategies that will address productivity of land to deal with food insecurity, acute poverty, and unemployment and provide sustainable livelihoods. The stakeholders therefore feel that these temporal measures may not go far even if replicated

It was also stated that resettlement programme should not focus on resettling the indigenous Malawian so as to assist non Malawians who own plenty of land such in Mulanje and Thyolo. The other argument is that tea and sugarcane growing has been left for commercial farmers who are mostly non Malawians. However, in countries like Kenya and Tanzania, smallholder farmers are the ones who grow tea and sugarcane for sell to processing industries. Malawi can do the same by coming up with a policy that would empower smallholder farmers to grow high valued crops like tea and sugarcane. This will intern reduce the landless and create employment for most rural people. And still others feel that land resettlement should not target customary land to avoid long-term cultural conflicts.

The other issue in the resettlement programme is culture. Malawi is one country with diverse of cultures which among them are the Patrilineal system – where men are the custodians of the land and the Matrilineal system which gives the rights to land to women. This means that the resettlement of people can only be possible and practical within regions to reduce culture conflicts. Tribalism still reigns in most parts of the country, therefore, it is also important to look at this issue critically. If people have to be resettled from one region to another there is need for a comprehensive civic education for both parties (those who are being resettled and the owners of the land). This should be done before the resettlement programme. It was cited that the culture differences if not addressed in the resettlement programme will hinder progress on the implementation exercise.

Technical expertise is another aspect which was mentioned in the consultation exercise. It was said that the resettled people need to be given the necessary skills and knowledge so that they can maximize the utilization of the small land that has been given to them. On the other hand provision of inputs and infrastructure should be done before hand as well. The people should have access to potable water, roads, schools, churches, hammer mills health centres and other important infrastructures. The government should also put deliberate measures to enable people to move willingly i.e. opening of industries in rural areas where there is adequate land.

During the community consultations in the North and Centre the people were of the view that those who want land should approach the chiefs for the resettlement. The governments view of land resettlement was highly opposed by the communities especially chiefs from Mzimba district. The people said that previously and even now there are people who have been given land on an individual basis and not by being motivated or being forced by the government to move to those areas. The resettlement of people in large numbers ignites

conflicts and increased crime. It was observed that the government's initiative on the resettlement programme does not reflect the interest of the people especially traditional leaders who are involved land matters areas of their jurisdiction.

The chiefs in the north and centre said that all land is allocated and there is no unallocated land for resettlement. They cited that land which is seen to be unallocated is already allocated it is only that it has not been put to use and others have left it for fallow and conservation purposes.

7.2 *Land Management and Productivity*

Land management and productivity is another issue, which was of great concern by most of the people consulted. Availability of land without proper management cannot yield good results. Most of the available land under cultivation is poorly managed and this has resulted into soils being eroded leaving unfertile bare land. The stakeholders expressed the view that land productivity can be maximized if people venture into intensive farming and conservation practices. Land productivity needs several factors among them are: -

- Changing systems of farming from use of a hoe to machinery;
- Conservation practices have to be enhanced and supported by policy and legislation and effective implementation thereof;
- Land ownership – if people do not own land it is very difficult for them to invest in land conservation;
- Need for soil surveyors and soil scientists to look at the soil and the types of crops that can do better in that type of land;
- Diversification of crops has also the potential to boost the productivity of land; and
- Availability of fertilizer and seeds.

However, these factors can only work with the availability of extension workers who are capable of transferring technical skills and knowledge in land productivity to the smallholder farmers. Farmers have to be taught on gross margins so that they are able to know how much they have invested in each crop enterprise. This would help them determine prices for their produce. Stakeholders also expressed concern over the disparities in the price of fertilizers as one factor, which has contributed to low productivity. Fertilizer is sold at different prices in different areas but the crops are sold at the same prices whether you bought the fertilizer at higher price or not. Government initiated a universal fertilizer subsidy program last year; but it is not clear whether this is sustainable.

7.3 *Inputs*

Communities and stakeholders consulted said that the issue of inputs is very critical in any agrarian country. Malawi as a country has no policy on inputs. Stakeholders feel that it is very important for the government to put in place a regulatory framework on inputs. This would

facilitate the sale and delivery of inputs to the farmers at the right time and within reach for any farmer wanting to buy. An example was given of the Targeted Input Programme (TIP) that was administered in the 2004/2005 season. The selection of beneficiaries was not transparent and the criteria not clear and this made the whole TIP program complicated and less efficient.

The universal subsidy on fertilizer was welcomed by most stakeholders consulted including the communities but the concerns were raised on how it should be phased out. Government in a number of cases starts a program and the next day you discover that that program has been replaced or removed completely. Stakeholders were of the view that the phasing out should be gradual until every citizen, especially smallholders, are capable of meeting the cost of fertilizer and that Government should ensure that people are food secure. The subsidized fertilizer should go together with subsidized inputs. Government should also look at subsidizing the prices of inputs if people are to have good yields. Most people are still planting seeds that are of low yielding quality.

The communities feel that there is need for a financial mechanism like Malawi Rural Development Fund (MARDEF) specifically for agriculture inputs in the country. This will assist farmers to access inputs without any problems. It would also assist the farmers to acquire inputs like seeds that are high yielding than relying on poor yielding seeds. There is need for more companies that would offer lower prices on inputs and these companies should be located in all the districts of the country for easy access by the farmers. The government should restructure ADMARC in a way that it does not carry the aspect of monopoly and exploitation but serve the interest of the smallholder farmers with the view of enhancing rural livelihood.

7.4 Markets

All the people consulted expressed concern over failure by the Government to provide markets for their products. Farmers have been producing without knowing where to sell their produce. There is a market for tobacco; however the prices offered are not appealing for most tobacco growers. This has even led to low production of the tobacco crop for most farmers have gone into other enterprises that would give them good return. There is also concern about tobacco buyers doubling as growers. A case in point is Limbe Leaf Company which has started growing tobacco in some parts of the country.

Information on the market prices is very important to farmers. Farmers need a reliable price information system for them to make sound decisions. The completeness of information is also very important in terms of prices and cost of production. The information should be accessible to the farmers and the medium used should be friendly in extending the information.

Stakeholders further stated that it is also important for farmers to be organized so that their products can be sold in bulk and provide them with bargaining power for competitive pricing. This will reduce exploitation by the vendors who buy farm produce at very low prices. It is also easy for them to be trained in any marketing and other technical skills. Technical services are a key in crop marketing. Most of the products on the market are not

attractive and it was recommended that farmers should be taught how to add value to their products.

The transportation system for agricultural produce in the country is very poor, especially for the places where agriculture is taking place. The roads to the market place are poor and farmers travel long distances to find market to sell their produce. There is need for the government and other stakeholders to improve infrastructure in all rural areas and transport facilities to ease transportation burden.

Stakeholders also noted that the country lacks processing industries in most of the agriculture produce. Processed products look attractive and they fetch good prices both at local and international markets. The government and other organizations should assist farmers in coming up with these processing industries by providing low cost technologies that are user friendly and can be repaired by the local people. Emerging infant industries should be encouraged and supported.

8. Strategies to Address the Challenges

8.1 Public Participation and Access to Land

In order to address the aforementioned challenges, the first and most important aspect is to building effective local communities and farmers support in the implementation of the reform programs involving the development of policies and legislations dealing with all land matters in all stages. By using this participatory approach will create ownership of the program and the communities will not be bulldozed when it comes to implementation. Civil Society Organizations and Non-governmental Organizations are key stakeholders in lobbying communities to participate in these processes.

Land redistribution alone is not enough for poverty reduction. The approach to land reform has to be holistic and land redistribution must ensure that households are provided with basic capital and extension services that will enable them make best use of land. Access to land must be complemented by access to non-land assets, access to credit markets, access to extension services and training of beneficiaries in modern farming techniques.

To deal with issues of corruption and political bias there is need to establish clear rules at local level, participation of beneficiaries and civil society organization in beneficiary selection, dissemination of accurate information, involving the communities in evaluating potential beneficiaries and making available information to the public on the households that have been selected within the community.

8.2 Policy and legislation

There is need to strengthen and encourage civil society organizations and networks with interest in land and agrarian reform in the country, that are capable of voicing the concerns of the local communities in policy processes and legislation development on land and agrarian reform. These institutions must lobby government and advocating for pro-poor policies aimed at addressing the needs of the rural people

9. Recommendations

1. Government should empower Malawians by promoting small-scale agriculture for high valued crops like tea and sugarcane. The policy is silent on this; however this is one aspect, which has perpetuated rural poverty and control of resources by foreigners and elite groups.
2. There is need for a comprehensive agricultural policy, which addresses increasing landlessness, land degradation, inputs and markets and rural infrastructure.
3. There is need to provide predictable and sustainable subsidy program for fertilizer, seed and other farming inputs. If inputs are subsidized, production of crops would increase significantly for most small-scale farmers.
4. There is need for a financial mechanism such as Malawi Rural Development Fund (MARDEF) specifically for agriculture to enable farmers access inputs and other agriculture facilities.
5. There is need for Government to support local processing of farm produce so as to add value to agriculture produce. Tax incentives and technology transfer should be promoted.
6. There is need for a comprehensive new land law that encompasses the general principles, rights and duties of various stakeholders as well as key elements for ensuring effective cross sector management between the institution responsible for land administration and other agencies who operate on land and whose activities have a bearing on land resources management.
7. Customary land should be vested in local institutions on trust for the people they represent. We believe this will ensure that community based natural resources management is properly anchored in appropriate tenurial framework. Under the MNLP, customary land has been given ample attention, the new law should ensure that the institutional arrangements have the necessary powers and flexibility to deal with local land stewardship and in that respect they be given the space to grow local governance systems best suited to their local needs.
8. Government should invest in public research that includes farming communities so that appropriate technologies are developed and utilized in line with local knowledge.
9. It is necessary for land policy to address equitable access to land by preventing land concentration in a few hands through land ceilings. Reducing the number of years one can hold land will not make land accessible.
10. It is necessary for land policy and law to entrench land rights for all Malawians especially women who are responsible for crop production yet their rights are dependent on their status as wives, daughters or such other status.

Annex 1: Terms of Reference

Background

Support to Land and Agrarian Reform Initiative, is a project which was initiated with an overall objective of equipping countries in the SADC region with capacity to implement comprehensive land reform and agrarian programmes consistent with their socio-economic development and food security needs.

The initiative is an intervention supported by two organizations CTDT and AIAS and supported by NORAD. It draws together seven countries of the SADC region namely Botswana, Malawi, Mozambique, Namibia, South Africa, Zambia and Zimbabwe.

The initiative will be implemented in two phases. The first phase will run for twelve months, whilst the second phase is expected to be implemented in three years. The first phase is more exploratory and involves stakeholder consultations and an in-depth understanding of land and agrarian reform issues in the selected countries. This phase is expected to bring together national organizations concerned with land and agrarian issues into strong coalitions.

The second phase will focus on a more detailed research and advocacy agenda on land and agrarian issues. The initiative is expected to significantly influence the agrarian reform

approaches, with the objective of reducing poverty by improving the food security in the region in addition to minimizing conflicts of land and mitigating land degradation.

Our main role is to act as a National Focal Point through which the support to land and Agrarian Initiative will be implemented in Malawi. The following assignments will be undertaken: -

- Develop a work-plan according to the methodology paper.
- Undertake a national stakeholder analysis as outlined in the methodology paper.
- Carry out secondary data analysis on issues related to land and agrarian reforms.
- Synthesize the consultation process into a national report as outlined in the methodology paper.
- Assist the Regional Coordinator in developing the Regional Proposal.
- Periodic reporting to the national stakeholders and Regional Coordinator.
- Financial reporting on disbursed funds.
- Instrumental in developing national coalition on land and agrarian reforms.
- Liaise with any institutions with an interest in land and agrarian reform in and outside the country.

Approach

The project will start with the desk study review to isolate major issues in land and agrarian reform. This will be conducted by undertaking literature reviews on various publications, as well as policies and legislation on land and natural resources and other related literature materials on land and agrarian reform. The desk study will produce an inception report which will identify information/gaps necessitating stakeholder consultations. A workplan and a draft interview guideline are provided in Annex 2 and 3 respectively. The stakeholder consultations will be done by conducting focus group meetings, workshops and telephone interviews in the three regions of the country. Two focus group meetings per region will be done to facilitate farmers and communities input in the country report. Thematic issues on land and agrarian reform will be identified and these together with the literature review will form a framework for review and analysis of current land and agrarian reform. A final report will be produced and presented to a national stakeholder's workshop. This workshop will be expected to review the report and make comments on the proposal for further research. The comments will be incorporated and submitted to Community Technology Development Trust together with our recommendations for the regional proposals.

Annex 2: Stakeholders Consulted

Name	Position	Organization
Mr. Elias	Executive Director	Farmers Union
Ms M Mapila		Farmers Union
Dr J. Kang'ombe	Lecture, Head of Aquaculture Dept	Bunda College, University of Malawi
4.0 Dr S Khaila	Lecture	Bunda College, University of Malawi
Mr. S. Mhango	Operations Manager	Malawi Rural Finance, Kasungu
Mr. Jando Nkhwazi	Executive Director	RUFA Mzuzu
Mr. B A F Mataya	Senior Lecture and Dean	Mzuzu University
Mr. Peter Soko	Lands Officer	Mzuzu ADD
Mr. Msosa	Projects Officer	Land O' Lakes Mzuzu
Mr. M. Banda	Lands Officer	Kasungu ADD
Mr. H Uluko	Lecture	Bunda College, University of Malawi
Mr. Zwide Jere	Country Director	Total Land Care
Mr. Victor Mhone	Country Coordinator	CISANET
Mr. Vipya Harawa	Legal Expert	Malawi Housing Corporation
E. Mponya	Assistant Projects Coordinator	Evangelical Lutheran Development Services
Collins M Moyo	Director of Policy and Planning	Ministry of Lands, Housing and Surveys
DDC Mauambeta	Executive Director	WESM
Mr. Pipila	Lands Officer (Mulanje)	Mulanje District Assembly
Ester Moyo	National Coordinator	LandNet Malawi
Ulemu Munthali	Assistant Programmes Officer	CURE
Jones Mwalwanda	Programmes Officer	Matindi Youth Organization
Billy Mayaya	Executive Director	Blantyre Synod, Church and Society

Community consultation in Mulanje
(This community has just been resettled in Machinga District)

Name	Position	Organization
O. D Mulenga	DYO/DEC Member	District Assembly
David Chamwala	Chairman	
Henry Kaipa	Secretary	
Patrick Saliya	Treasurer	
John Kausinga	Vice Secretary	
Mary Kumbayani	Vice Chairman	
Befiya Musa	Committee Member	
Evelyn Kwakwala	Committee Member	
Dick Namuotche	C.O.C Chairman	
Rose Chamwala	Vice Secretary wa zachilengedwe	
Paul Chiwaya	Chairman wa zachilengedwe	
Frances Chiwalo	Secretary wa zachilengedwe	
Rose Khobili	Member osamuka	
Mercy Mapondo	Committee member wa zachilengedwe	
Elesi Chilumpha	Member osamuka	
18. Efe Jivalasoni	Member osamuka	
Esnart Chopwa	Member osamuka	
Mary Kaponda	Member osamuka	
Margaret Moses	Member osamuka	
Daina Chapola	Member osamuka	

Lydia Lambwe	Member osamuka		
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Consultations with Smallholder farmers in Kasungu

Friday Mwanaku	Crops Officer		Kasungu ADD
Petala Basikolo			
Mateyo Banda			
Mai Feresta Mwaiwatha			
Tadeyo Tsalani			
Mandaliza Kamwana			
Mwayiwathu Njiwa			
John Moyenda			
Mrs. Grace Katha			
Marita Waluza			
James Mayikolo			
Zenus Mwachusiza			
Zinenani Banda			

Consultation with Chiefs in Mzimba District

Chinombo Chali	GVH		
Mulomuzana Gausi	GVH		
Mr. Mkandawire	GVH		
Yamboto Chiwembe	GVH		
Thembula Chifisi	GVH		
Galera Shawa	GVH		
Mr. Mutonga	former MP		
Mr. Mwanza	GVH		
Mutambalika Moyo	GVH		
Jeremiah Mahowe	GVH		

Mr. Mwanza		GVH	
Kapokomo Kumwenda		VH	
Kasulu Phiri		GVH	
Mrs. Phiri		GVH	
Mrs. Mtika		GVH	
Mrs. Longwe		GVH	
Mr. Phiri		GVH	
Mr. Mhango		Coordinator	Church & Society L./Synod
Mr. Chavula		VH	

