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Land Tenure: Norway and Malawi

Land Tenure and Social Capital in
Malawi

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Land Tenure

- Language: meaning of technical terms
 - Land: subsoil, surface, things attached to the surface
 - Tenure: At a minimum a system of rules defining who has the legitimate rights to appropriate which goods from a given area
 - Property rights to land = land tenure
- Systems of coherent forms of property rights
 - Individuals with freehold rights
 - Groups with freehold rights as a group
 - Public bodies with freehold rights

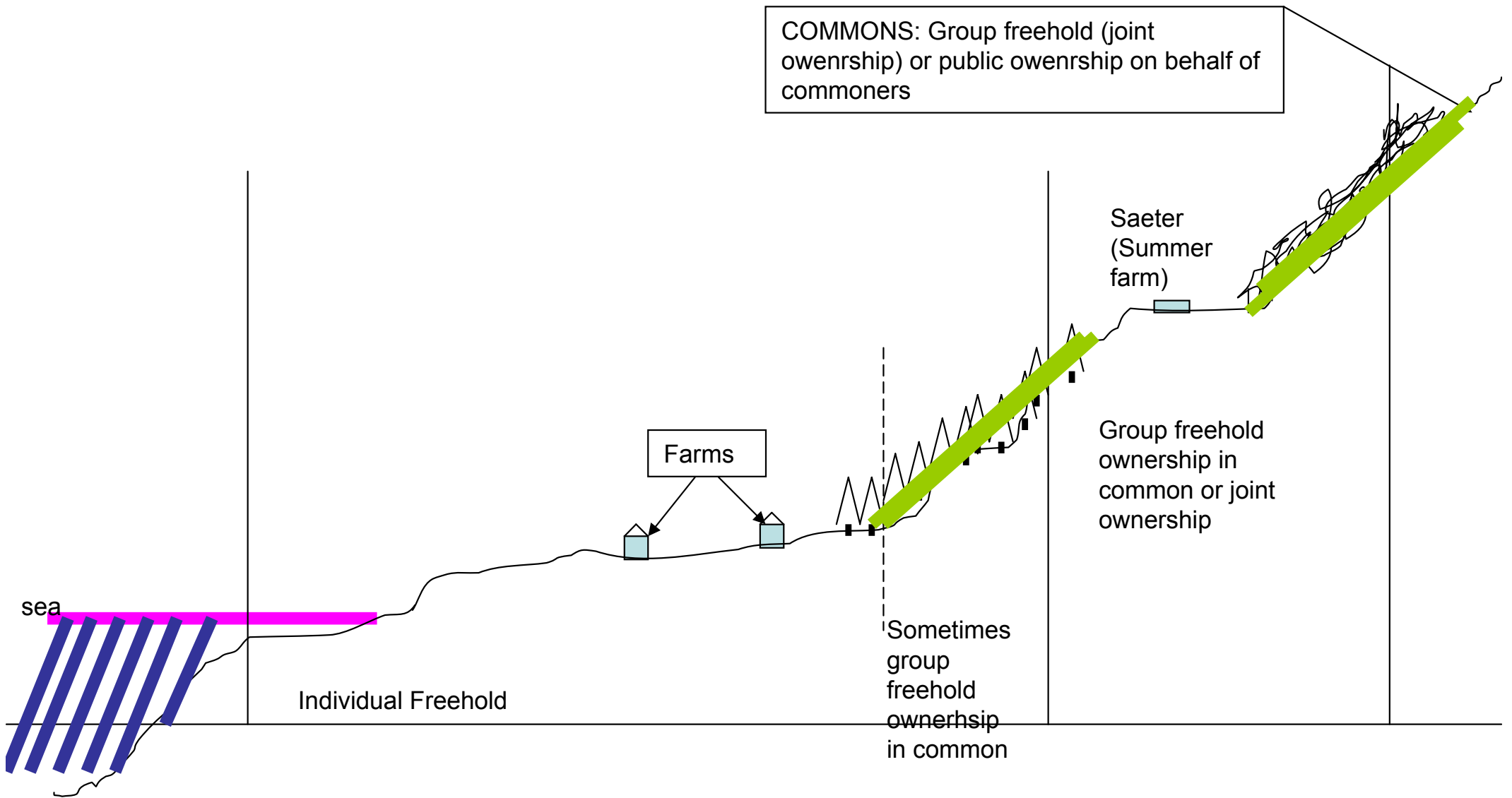
A Definition

- **Property rights provide legitimate allocation to particular owners, material or immaterial objects supplying income or satisfaction to the owner. They comprise a detailed specification of rights and duties, liberties and immunities citizens have to observe. These are partly defined by law, partly by cultural conventions, and they are different for owners and non-owners. Property rights are ultimately guaranteed by the legitimate use of power.**

Customary law

- Institutions (recall from SOS3508):
 - Shared strategies/ conventions [People with attributes (A) and goals (I) under conditions (C) do X]
 - Norms (DEONTICS are added)
 - Rules (OR ELSE is added)
- All laws (written as well as unwritten) are rules, but not all rules, not even if used by a community, are laws (not all customs are law)
 - What makes a rule become law?
 - Proposal: ADICO statements (=rules) with certain moral and ethical qualities

NORWAY: from sea to mountain



What is a commons?

A Commons is

- a system of usage of an area where
- a multiplicity of partly interdependent users and interests are
- appropriating one or more type goods from
- a multiplicity of partly interdependent resources

My commons 😊

- Norway
 - Located on the north west coast:
 - “THE WEST NORWEGIAN FJORDS”

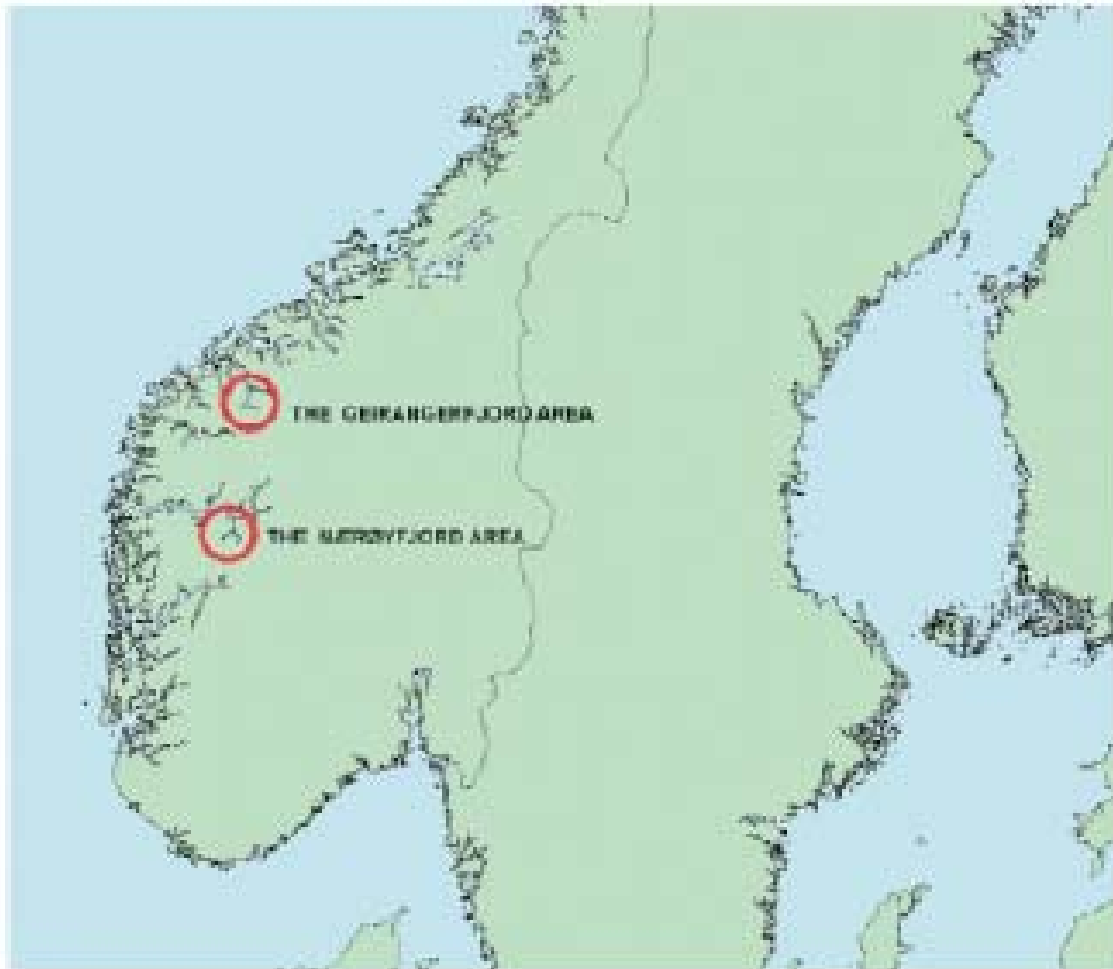


Figure 1. Location of property





My commons 😊

- Owned privately, but not all with use rights are owners of the ground
- Used jointly among 4 farms
- Used for pasture, hunting and fishing
 - pasture rights belong to the 4 farms
 - hunting rights belong to the owners of the ground

My commons ☺

- Today redefined as a world heritage site to
 - *safeguard a distinctive, beautiful landscape of fjords and mountains containing a rich and varied plant and animal life,*
 - *safeguard valuable cultural landscapes where fjord farms, transhumance dairy farm settings and historic and prehistoric monuments and sites form important elements in the distinctive character of the landscape,*
 - *safeguard geological features and landscape forms.*

Reasons for keeping some resource as commons I

Management no problem:

- If there is enough for all with access to a resource there is no reason to incur the costs of enforcing property rights.

Human rights and equity:

- If access to a resource is essential for the survival of a family it would be seen as unjust to deny anyone access to a minimum level of the resource.

Reasons for keeping some resource as commons II

Growth strategy:

- If a community holds the view that there is safety in numbers, maximising the number of people imply resource access for every member of the community.

Exclusion technology

- If there are technical difficulties in excluding particular persons from access to a resource, keeping it in common may be the only feasible way of managing it

Reasons for keeping some resource as commons III

- Size and diversity of resources
 - If the density of a resource is low or if the diversity of resources within the area is large (larger than what one household is expected to be able to harvest efficiently) than the most sensible way of managing the resource may be to permit access for all, keeping the area as a commons

Thus, commons abound both in European history and in contemporary, so-called ‘traditional societies’.

Actors and Goods

- Who are the actors entitled to appropriate?
 - Everybody? Members of the group? Villagers?
 - Members: Individuals? Households?
 - Stakeholders: Owners or non-owners with a legitimate interest
- What are the goods the actors appropriate?
 - Renewable – depletable
 - Movable – localised
 - Mass product – signature product
 - Excludable – open access

Appropriator units

According to law

1. Legal persons (citizen, firm) in State commons, Salt water fisheries
2. Cadastral units (farm, fishing vessel, herding unit) found in Bygd/ State commons, Salt water fisheries, Reindeer herding, Forest commons
3. Registered persons (individuals according to registered residence) in Bygd/ State commons, reindeer herding

The goods

Basic resource classes according to Norwegian law

1. Ground and remainder
2. Pasture, timber, fuel wood,
3. Timber
4. Hunting of small game (except beaver)
5. Hunting of big game
6. Anadrome fish (salmon, trout)
7. Fresh water fish except anadrome species
8. Salt water fish except anadrome species

Ways of appropriation

Reasons for appropriation

- How do actors go about appropriating?
 - Individually
 - Jointly
 - Subcontracting
- What are the actors allowed to do with the goods appropriated?
 - Own consumption
 - Selling in the market
 - Allocate to public benefits

Ownership of commons

- Private commons
 - Owned jointly (devolve to co-owners)
 - Owned in common (devolve to successors)
- Public commons
 - Owned locally (local state)
 - Owned by the state (sovereign state)

Relation between resource and owner

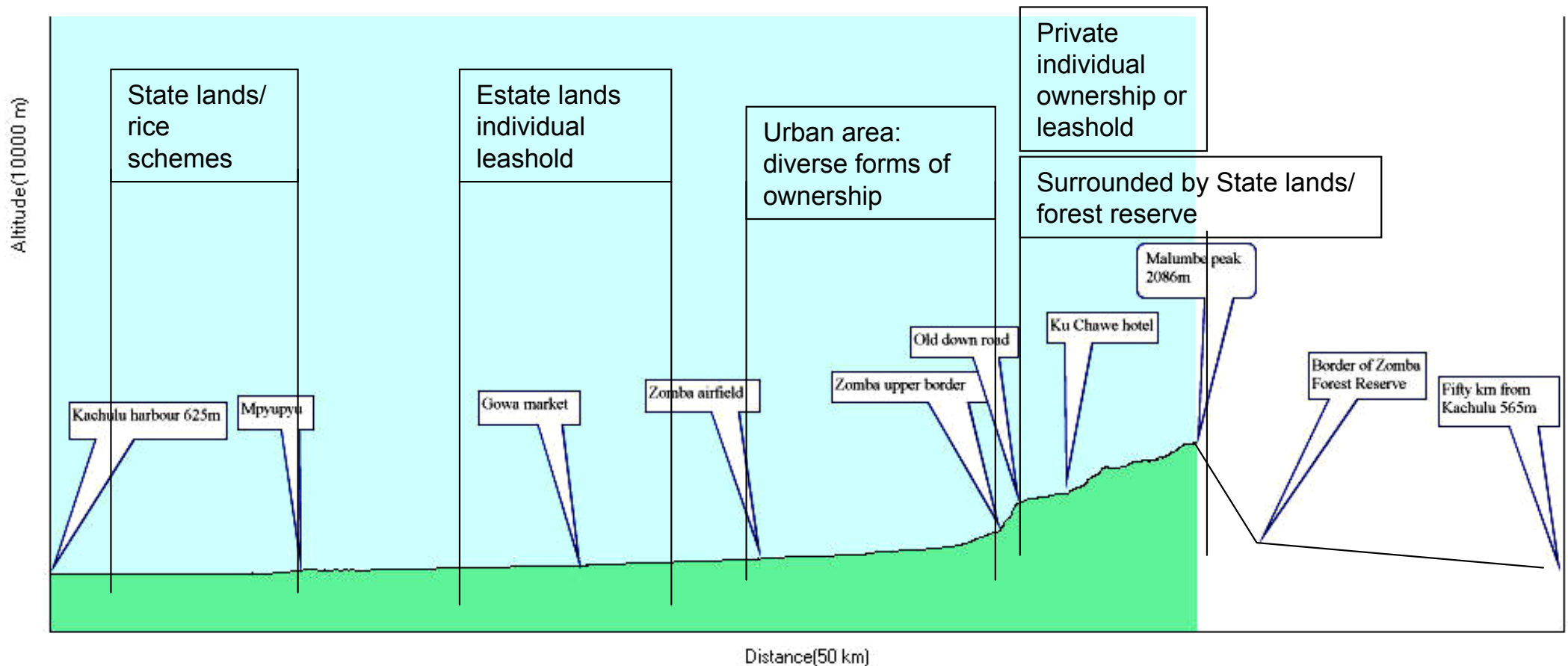
“Form” of ownership of resource

- Fee simple (one owner, legal person)
- Co-ownership (more than one owner, legal persons)
 - Ownership in common (fractional interest)
 - Joint ownership (equal interest)
- State ownership (the state is holding title on behalf of a group ranging from a few farms to the population of Norway)

Malawi: from lake to mountain



Malawi: from lake to mountain around Zomba



Chilwa to Malumbe



Official Land Classification

Statistical Yearbook 2004, table 1.1

Year	1965	1970	1975	1980	1985	1990	1995	2000
Land area	9.42	9.42	9.42	9.42	9.42	9.42	9.42	9.42
Type of land								
Customary	8.01 85.0%	7.69 81.6%	7.53 79.9%	7.50 79.6%	7.40 78.6%			7.04 74.7%
Public	1.17 12.4%	1.54 16.3%	1.66 17.6%	1.70 18.0%				2.02 21.4%
Private	0.24 2.5%	0.20 2.1%	0.34 3.6%					0.36 3.8%
-Leasehold	0.08	0.08	0.24					0.29
-Freehold	0.16	0.12	0.10					0.07

Land Tenure in Malawi

1. History
2. Population and area, land scarcity
 1. ETLR: evolutionary theory of land rights
3. Systems of governance
 1. Traditional authorities (TA)
 2. "Modern" state government in the Western tradition
4. Legal systems
 1. Customary law
 2. "Modern" statutory law in the Western tradition

Land Reform -history

- 1891 English protectorate
- 1964 Independence
- 1967 Comprehensive Land Law
- 1996 Presidential Commission of Inquiry on Land Policy Reform
- 2002 “Malawi National Land Policy”
- 2004 “Malawi Land Reform Programme Implementation Strategy (2003 – 2007)”
- 2006 Special Law Commission presents drafts of new legislation to the parliament

Land reform -context

- History of statutory legislation in the English tradition, neglect of customary law
- Land abundance, exit is the most easy option
 - The culture of land abundance
- Social Power
 - Power is seen as personal, based on charisma and lineage connections, linked to magical powers

Conflicts between Customary Law and Statute Law

- The court system of Anglophone Africa was bound to enforce customary law unless
 - It is repugnant to natural justice or morality
 - It is inconsistent with statute law
 - It is inappropriate to the particular circumstance of the case
- This still is the case (?) more or less

Land reform –contemporary drivers

- Population growth → land scarcity → increase in conflicts
- Transfer of land to commercial agriculture → land scarcity → increase in conflicts → blaming the powers that transfers land
- Land tenure ideology among donor organisations → individual titling solves the problem (but are not sure what the problem is)
- Social change makes it difficult for people to achieve their private goals about security of tenure and devolution of land. Interference from government, traditional authorities and lineages.
- Customary law is changing, or eroding. Determining what the law says is increasingly difficult (mortality, shifts in population, corruption)

Land reform -proposal

- Transfer of ownership of land from the president and the government to the traditional authority chiefs (trust ownership)
- TA power to be exercised in a committee
- Reforming the land surveying services and open up for titling on demand

Customary Land Administration

- TA - Traditional Authority, The Chief with or without his advisers (induna) can do
 - Land allocation
 - Land forfeiture
 - Settle land disputes
 - Impose reasonable regulations on land use
 - Accept surrender of land
 - Appropriate unused land for his personal use
- The authority of the chief may in some matters be delegated to the Village Headman

Customary land tenure

- Technical language
 - Bundles of rights comprising resource specific rights to some of the following
 - Access
 - Withdrawal
 - Management
 - Exclusion of other stakeholders
 - Alienation of any or all rights for a term or forever
 - Fee simple: NOT PART OF CLT
 - Easements NOT PART OF CLT
 - The residual / remainder: NOT PART OF CLT

Land classification in Malawian CLT

Land for common usage

- Dambo –pasture land
- Communal meeting places
- Roads, footpaths
- "waste lands"

Land for exclusive individual (household) use

- Malo – building site
- Dimba – vegetable garden (irrigated?)
- Munda – farmland other than dimba

Reserve land for allocation to villagers or for
common use

Resources found on commons I

- **Resources useful for dimba**
 - Water
 - Dung
 - Poles for fencing (wood or bamboo)
- **Resources needed for keeping grazing animals**
 - Pastures within reach for a sedentary household
 - Access to water
- **Mineral resources, useful for building purposes**
 - Stones
 - Sand, gravel
 - Soil, mud
 - Clay

Resources found on commons II

- **Non-tree forest products (NTF products)**
 - **Grass for thatching**
 - **Fruits from wild trees**
 - **Wild berries**
 - **Medicinal herbs and roots**
 - **Herbs and roots for food**
 - **Mushrooms**
 - **Honey**
 - **Mice**
 - **Insects, Caterpillars**

Resources found on commons III

- **Hunting and fishing (access to areas rights to hunt, fish)**
 - **Animals that can be hunted**
 - **Wild birds that can be hunted**
 - **Birds whose eggs can be collected**
 - **Fishes that can be caught**
- **Tree forest products (including bamboo)**
 - **Firewood (wood, bamboo, ...)**
 - **Wood for production of charcoal**
 - **Wood for burning of bricks**
 - **Wood, bamboo for building purposes**

Concluding

- The difficult part in land reforms is lands and resources held in common
- Poor people will to a higher degree than rich people depend on the commons
- Recording of rights to different kinds of resources in the commons will frequently overlook the resources only poor people utilise