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The Role of the National Institutional Framework for Land Tenure on Contract-Farming Public-Private Partnerships in Malawi: a Case Study of Two Sugarcane Outgrower Schemes

Abstract: Public-private partnerships (PPPs) as a form of contract farming are increasing in number across Sub-Saharan Africa; providing a potential solution to the threat of food insecurity and stimulant of economic growth. Yet, the perceived extent to which the operations of contract-farming PPPs include original smallholders – *inclusivity* - is often questioned. There is currently little evidence of the effects of the national institutional framework on the *inclusivity* of contract-farming PPPs. Using two such partnerships – both sugarcane outgrower schemes in Malawi – this thesis reduces this gap in the literature. Outgrower schemes from Nkhotakota and Chikwawa Districts are analysed within the context of the Malawian land tenure framework and government initiatives.

The current study has four main findings for the effects of the national institutional framework on the *inclusivity* of contract-farming PPPs. 1) Land policies which fail to title individual users of customary land will likely result in *less-inclusive* contract-farming PPPs. 2) National land-valuation procedures which are unregulated by strict guidelines, and fail to recognise the market value of customary land have the potential effect of reducing *inclusivity* of contract-farming PPPs. 3) A well-enforced justice system may counteract, to an extent, these potential negative effects, thus supporting the *inclusivity* of contract-farming PPPs. 4) These potential negative effects of land tenure on *inclusivity* may be exaggerated by government initiatives which actively promote agricultural investment into areas of customary land, and are under international pressure to do so.

Keywords: contract farming; public-private partnerships; outgrower schemes; inclusivity; land tenure policy; agricultural development initiatives

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Acronyms and Definitions

Dambo	the local, Malawian word for a floodplain by a river; wetland
DCGL	Dwangwa Cane Growers Ltd.
DCGT	Dwangwa Cane Growers Trust
EU	European Union
FGD	Focus-Group Discussion
GDP	Gross Domestic Product
GoM	Government Of Malawi
KCGL	Kasinthula Cane Growers Ltd.
Lonrho	Lonrho Sugar Corporation
Ltd.	Limited.
MLH	Ministry of Lands and Housing
MoA	Ministry of Agriculture
OMC	Outgrower Management Company: either DCGL or KCGL
plc	Public Limited Company
PPP	Public-private Partnership
SSA	Sub-Saharan Africa
SHSA	(the) Smallholder Sugar Authority
SVCGT	Shire Valley Cane Growers Trust
TA	Traditional Authority
Trust	Outgrower Management Trust: either DCGT or SVCGT

1. Introduction

Since the end of the Second World War, the number of contract-farming agreements has increased at the global level (Young and Hobbs, 2002). Indeed, this rise in frequency is not restricted to any one region nor strength of economy: examples can be found in the United States (Rehber, 2007, pp.80-85), China and India (Rehber, 2007, p.54), Latin America (Key and Runsten, 1999), and South East Asia, Europe and Africa (Swinnen and Maertens, 2007). Whilst many definitions of contract farming exist, the current thesis utilises the following, adapted from Prowse (2012, p.12); and from Minot (2007), cited in Prowse (2012, p.10):

Agricultural production carried out according to a prior agreement between a farmer and a firm, in which the firm specifies one or more conditions of production and the farmer commits to producing a given product on land held or controlled by the farmer.

The potential of contract farming for linking smallholder farmers via vertical integration with larger firms may ensure smallholder inclusion in the growth of the agricultural sector as a whole (Prowse, 2012; Key and Runsten, 1999). With contract farming, the firm is in a position to control the supply of produce via the provision of inputs and services (Key and Runsten, 1999). Indeed, the London-based brewery company SABMiller viewed its schemes in Zambia as an opportunity to control the supply of agricultural produce through injecting capital and knowledge, whilst simultaneously entering the local Zambian market (OECD, 2008). Similarly, smallholder farmers are predicted to benefit from contract farming in many ways: through maintaining the rights to their land, through having a guaranteed market for their product; and in many cases, through access to resources and knowledge. The opportunities for crop diversification through the latter are also increased (Little and Watts, 1994, p.189). The reduction in transaction costs is stated as a clear benefit for all parties involved in contract farming due to the reduced levels of uncertainty in produce quality and in exchanges (Prowse, 2012). For these reasons, amongst others, many governments endorse contract-farming agreements as a means to achieving inclusive agricultural growth (Little and Watts, 1994, pp.189-191).

Governments across Sub-Saharan Africa (SSA) have often endorsed outgrower schemes through agreements with private companies, resulting in a number of contract-farming public-private partnerships (PPPs). Loosely defined, a PPP is a framework which allows private entities to collaborate with public organisations, thus sharing 'resources, knowledge, and risks' (Fairtrade

Foundation, 2014, p.4). In Senegal, the government has set-up the Agricultural Markets and Agribusiness Development Programme with financial help from the World Bank and Canada, and technical help from the African Development Bank and European Union (Matsumoto-Izadivar, 2008). One role of this programme is to facilitate the formation of contract-farming public-private partnerships. In the early-1990s, the Zambian government set-up a series of contract-farming PPPs in the form of trusts which included the Livestock Development Trust and the Cotton Development Trust (Bonaglia, 2008). These trusts were commercially-orientated yet dealt with public funds and assets. The Cotton Development Trust was of particular success: through the channelling of donor funds and the engagement of private companies, 220,000 smallholders now participate in outgrower schemes which give them market linkages to sell their crops (Bonaglia, 2008). The government in Ghana has set-up a series of contract-farming public-private partnerships: contracting donor money in an effort to establish outgrower schemes (Wolter, 2008).

A popular format of contract-farming PPP promoted by governments is the nucleus-estate model. Here, a central, private estate purchases further produce or seeds from smallholder farmers on its peripheries. Prowse (2012) notes how this approach is more-applicable to crops with a high degree of perishability such as sugarcane - which needs to be processed soon after harvest in order to preserve sucrose content (Illovo, 2014)-. In general, the international community is supportive of outgrower schemes that use a nucleus-estate model and thus vertically integrate neighbouring smallholders with the successes of larger farms. In SSA, the World Bank has invested in many nucleus-estate outgrower schemes, 'often in joint ventures with the state' (Payer, 1980, cited in Little and Watts, 1994, p.78).

With the achievement of food security being a central goal for many governments across SSA, contract-farming PPPs are also providing a potential solution to food shortage threats. Through connecting smallholder farmers, private companies, national- and district-level government, and other organisations, investment can be channelled in a more-inclusive, risk-sharing manner. Such higher levels of investment into agriculture are assumed to lead to increases in agricultural productivity (de Soto, 2000; Demsetz, 1967) whilst maintaining smallholders' rights to the land. This reinforces the potential link between contract-farming PPPs and national economic growth. However, the implications of contract-farming PPPs which involve large-scale agricultural investments are debated (Herrmann and Grote, 2015). Whilst such vertical integration may

indeed increase employment opportunities and bring more money into the local economy, this may actually come at the expense of local food security, the environment and the people's access to land (Herrmann and Grote, 2015; Cotula et al., 2009). The negative effects of the latter may be exaggerated by weak land tenure frameworks that facilitate 'land-grabbing' (Cotula et al., 2009, pp.90-91).

The perceived extent to which the operations of a contract-farming PPP include original smallholder farmers – *inclusivity* - is not always uniform. The results of PPPs are more effective, more sustainable and more *inclusive* if the partnerships fully engage with the smallholders; regarding them as equals, not merely as *beneficiaries* or agricultural labour (Herrmann and Grote, 2015; Fairtrade Foundation, 2014; OECD, 2008). Key and Runsten (1999) report that contract-farming smallholder farmers are often left out of negotiations. By analysing PPPs located in Ghana, Malawi and Kenya, the 2014 Fairtrade Study reported a consistent failure by PPPs to incorporate smallholders' opinions and best-interests in their operations. The interests of smallholder farmers were therefore less protected. Given this, the benefits of contract-farming PPPs which are 'demand-driven' – terms designed by the more-powerful private companies and national or district governments, for example – are less likely to be *inclusive* (Fairtrade Foundation, 2014, p.30). This may either be due to the top-down presumption that these terms are in the smallholders' interests, or may be due to an insufficient framework through which smallholders' voices may not be heard. It follows that contract-farming PPPs of a supply-driven nature will be more *inclusive* in their final effects, having taken into account the opinions of smallholders throughout the whole process.

The household welfare and income poverty levels of participants in contract-farming outgrower schemes have been studied (Mudombi et al., 2016; Herrmann and Grote, 2015; Bolwig et al., 2009). The former two studies both used the Dwangwa sugarcane outgrower scheme in Malawi as a case study. By using a range of variables including, but not limited to, 'Years of Schooling', 'Nutrition', and 'Electricity', Herrmann and Grote (2015) report that the household welfare levels of participating households are significantly higher than comparison households in the Dwangwa area. Similarly, Mudombi et al. (2016) report that participant households in the Dwangwa scheme exhibit significantly lower income poverty than control households. Herrmann and Grote (2015) also comment on high levels of social conflict over land in the

sugarcane outgrower expansion programmes. Yet, neither study comments upon these conflicts further, nor the *inclusivity* of the Dwangwa sugarcane outgrower scheme.

In general in the literature, despite the recent rise in the number of contract-farming PPPs that are forming, there has been little analysis into the effect of national institutional frameworks on the *inclusivity* of contract-farming PPPs. This current paper seeks to fill that gap by analysing the case study of contract-farming PPPs in Malawi, under the context of the Malawian land tenure framework. The two contract-farming PPPs under analysis are both sugarcane outgrower schemes: the Dwangwa sugarcane outgrower scheme and the Nchalo sugarcane outgrower scheme. Both sugarcane outgrower schemes are based around a nucleus-estate model whereby the private company - Illovo Sugar Malawi- purchases sugarcane from smallholders to supplement its own estates' produce. In Malawi, land tenure policies refer to customary and private land rights as well as systems for valuating land and compensating landholders. Hence, this study will analyse these institutions and practices; looking into their effects on the *inclusivity* of sugarcane outgrower schemes in Dwangwa, Nkhotakota District and Nchalo, Chikwawa District.

The Current Thesis

The current paper undertakes a qualitative analysis of contract-farming PPPs in Malawi using two sugarcane outgrower schemes as a case study. The resulting *inclusivity* of the PPPs is considered in light of the Malawian institutional framework for land tenure and government initiatives for agricultural development. To my knowledge, this is the first paper which takes such an approach. The rest of **Section 1** provides a theoretical and contextual background. **Section 2** outlines the methodology. **Section 3** introduces a brief history of land tenure in Malawi including policies and legal frameworks, and of relevant agricultural-development initiatives. **Section 4** provides a background to the sugar industry in Malawi and introduces the case study outgrower schemes in more detail with a two-part model. **Section 5** predicts a mechanism by which the Malawian land-tenure policy – from Section 3- affects the *inclusivity* of the outgrower schemes described in Section 4. Relevant agricultural development initiatives are also taken into account. Qualitative evidence on the operations for the two sugarcane outgrower schemes in Malawi is presented and analysed here.

Given the theory, the Dwangwa and the Nchalo sugarcane outgrower schemes are easily justified as a suitable case study for many reasons: 1) they provide a clear example of contract-farming public-private partnerships set-up by the government with the intent of stimulating agricultural productivity. For this reason they are characteristic of many other contract-farming PPPs in SSA. 2) The land tenure framework in Malawi incorporates elements of both customary and private land rights. Given this, and the institutions in place to govern land valuation and compensation procedures, the chosen case study allows for analysis into a wide spectrum of land tenure rights and their effects on *inclusivity*. 3) The sugarcane industry in Malawi is an extremely important contributor to the national economy through taxes, direct and indirect employment, and through being the country's third largest source of export revenue (Illovo, 2014). Motivations behind land-based transactions are therefore easier to interpret. This, and the fact that the government is trying to promote agricultural diversification away from the current main export – tobacco, which contributes more than 50% of all exports earnings-, renders the chosen case study of even more relevance (Peters and Kambewa, 2007). **Section 6** provides a conclusion. This thesis therefore contributes to the literature on the role of land tenure for designing successful and *inclusive* contract-farming public-private partnerships.

Malawi Country Profile

Malawi is a land-locked country in Eastern Africa with borders touching Tanzania, Mozambique and Zambia (Figure 1). In 2015, Malawi ranked 170th out of 188 countries and was classified in the 'Low Human Development' category for the United Nation's Human Development Index (UNDP, 2015). On top of this, in 2015, Malawi had the fourth lowest nominal GDP per capita in the world (World Bank, 2015a) rendering it highly dependent on oversees aid: official development assistance comprised 88.2% of the Malawian Government's expenditure in 2015 (World Bank, 2015b).

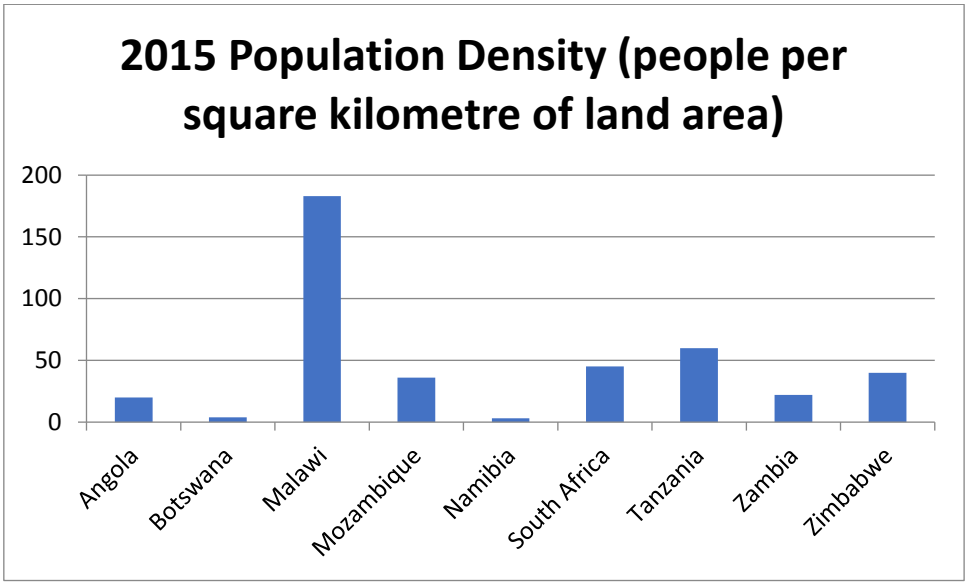
Figure 1: **Malawi location map within Sub-Saharan Africa;** Malawian District boundaries shown. Lilongwe district marked by horizontal stripes, the capital Lilongwe is located here (black dot). The current study looks at sugarcane outgrower schemes in Nkhotakota and Chikwawa Districts (both highlighted).

Source: cartographicstudio.eu, in Green (2010, p.415).

In terms of size, Malawi occupies 118,484 square kilometres, 79.4% of which is arable land (Kishindo, 2004). Yet, despite this high percentage, Malawi has one of the highest population densities in Sub-Saharan Africa meaning that land is relatively scarce (Figure 2). The country-

average population density was 183 people per square kilometre in 2015 (World Bank, 2015c), with rates much higher in the Southern districts (Landell Mills, 2012). This is very high in comparison with Malawi's three neighbouring countries: 22, 36 and 60 people per square kilometre of land area in Zambia, Mozambique and Tanzania respectively (World Bank, 2015c). On top of this, annual population growth rates in Malawi are very high at 3.1% (World Bank, 2015d) with the population on course to have more than doubled in size by 2020, compared to the year 2000 (National Statistical Office of Malawi, 2013).

Figure 2: Population density of Malawi, its neighbours and other countries in the region.



Source: World Bank (2015c).

Such land-scarcity may contribute to Malawi's high-risk status for food insecurity. Indeed, between 2010 and 2012, 23% of the population were found to be undernourished (Food Security Portal, 2012). Over 80% of the Malawian population are reliant on agriculture to generate income, and the export of tobacco, sugar and tea is one of the largest contributors to the economy alongside foreign aid (Peters and Kambewa, 2007). This means that the focus of Government development initiatives lies heavily within the agricultural sector (Kishindo, 2004). In this context, contract-farming public-private partnerships have been embraced by the Government as a plausible way to transform the agricultural sector.

Post-colonial Malawi has been described as a dual state whereby the Government and Traditional Authorities ruled in a direct and indirect manner respectively (Eggen, 2011). To a similar extent, modern-day Malawi continues to demonstrate these two forms of rule. Traditional Authority is hierarchical form the village level – *village head* - and group village level – *group village head* -, to the district level – *sub-chiefs,* and then *senior chiefs* who are responsible for Traditional Authority areas, of which there are 280 in Malawi. Positions are mainly inherited but the respective groups of Traditional Authority may nominate specific levels of leadership (Eggen, 2011). Appendix 1 shows the Traditional Authority areas which contain the two sugarcane outgrower schemes in question.

General Theory on Land Tenure: Customary and Private Land Rights

The question of land rights in Sub-Saharan Africa can be divided approximately into two main theoretical approaches: private land rights and communal land rights (often referred to as *customary* in the Sub-Saharan African context). Some scholars propose private land rights as a sure-fire means to a productive use of the land, and thus subsequent economic growth; see de Soto (2000) and Demsetz (1967). This is currently the more mainstream approach. On the other hand, proponents of communal land tenure argue that the collective ownership of land preserves Traditional Authority and the poorer individuals' access to land, amongst other factors; see Benda-Beckmann (2001). Much like many other Sub-Saharan African countries, Malawian land policy incorporates an element of both private and customary land rights (Chimhowu and Woodhouse, 2006; Malawi National Land Policy, 2002; The Presidential Commission, 1999).

An Introduction to Customary Land Tenure

Customary land rights in Sub-Saharan Africa stem from the pre-colonialism period which saw Traditional Authorities (TAs) allocate usufruct land rights to their subordinates, often in return for loyalty and labour (Berry, 2002). This modern-day interpretation of these pre-colonialism institutions is, to an extent, marred by colonial authorities' interpretations and by locals describing a 'shifting kaleidoscope' of practices to said authorities which often reflected personal interests (Peters, 2009; Berry, 2002, p.643). Despite this, it is generally accepted that customary land rights or land tenure involve a defined group of individuals who collectively own the land. Within this group, there is a central authority bestowed with the power to allocate land to the individual members or families (Platteau, 1995). This system has manifested itself across SSA in a number of ways; ranging from village commons to individual parcels of land, held privately by

member families or individuals within the framework of customary tenure (Platteau, 1995). In summary, the interpretations of customary tenure are certainly diverse, yet a central theme underlies its workings in that the land remains in the possession of the community; theoretically free from alienation (Silungwe, 2009; Kishindo, 2004).

Criticisms of the communal land tenure are rife, not least in popular development literature. The first major criticism refers to insecurity of customary land tenure. Such insecurity may stem from land allocation powers lying in an often-unregulated Traditional Authority who has the right to appoint land or remove it at their wish. Insecurity may also come from a weak national-level legal framework that fails to support customary land rights. Even if customary land rights are technically protected by the national legal framework, if the enforcement of this framework is weak then the rights are insecure in practice. Given this, individual customary-land users may feel insecure in their long-term land usage rights and so less likely to further invest into the land (Peters, 2009). Indeed, de Soto (2000, cited in Chimhowu & Woodhouse, 2006, p.347) linked the 'ambiguity and negotiability of [customary] rights' to low levels of investment; this could potentially prevent higher levels of productivity being reached.

The second point is related: criticism comes in the form of customary land tenure's perceived instability in the face of increasing 'population pressure' (World Bank, 1989, p.104). With heightened competition over the land, communal tenure is deemed less effective at maintaining control and preventing Tragedy of the Commons-like effects (Njoh, 2006, p.83; Platteau, 1995). In such situations of land scarcity, the customary system is predicted to transition into an informal land-market, as the market value of the land rises, often violating customary land rights in the process. Finally, critics argue that communal land tenure prevents lands users from using the land as collateral for accessing capital for investment (de Soto, 2000; Demsetz, 1967). Given this, free-market dynamics are less likely to emerge that are characteristic of economic growth.

Yet, extensive literature exists which challenges the theoretical bases of both customary and private land tenure. Such literature finds these criticisms of customary land tenure to not always be the reality. As has already been mentioned, the nature of customary land rights varies across localities and between customary groups in SSA (Platteau, 1995). It is true that in some systems, being a member of a group does not always permit 'a timeless and secure right' to land, due to

the negotiability of customary land tenure (Lund, 2000, p.5). However, there are examples of customary land tenure systems where being a member does indeed entitle one to land. Gluckman (1965, p.101, cited in Peters, 2009, p.1318) found that in 1950s Northern Rhodesia [Zambia], group membership meant an individual was eligible to receive a parcel of the customary land. However, the legal backing of these individual rights is still called into question and is highly dependent on the enforcement of the national legal and institutional framework, amongst other factors.

The fact that customary land tenure does not lead to high levels of productivity is heavily disputed (Peters, 2009; Chimhowu & Woodhouse, 2006). In a much-cited study, Migot-Adholla and Peter (1993) found that in several locations in Ghana, Rwanda and Kenya, the level of agricultural productivity was independent of the nature of land tenure; other factors must be at play. This same study observed that customary land tenure carried a strong chance of children inheriting their parents' land, and so parents were still incentivised to improve their land. Customary land tenure is not always an anathema to generating capital: Berry (1975) studied three rural locations in Western Nigeria, all under customary tenure; finding that within customary groupings, individuals banded together and organised themselves in order to gain access to capital.

With respect to the formation of market-like dynamics, informal land-markets are becoming increasingly more common on customary land and evidence of their existence goes back over 100 years (Chimhowu & Woodhouse, 2006; Lund, 2000). In a 1987 study of agricultural land transactions in Lesotho, Lawry (1993) describes incidences of renting, leasing and sharecropping of customary land as well as selling land to so-called strangers. Mathieu (1997) and Lund (2000) draw upon similar cases across Burkina Faso, Cote d'Ivoire, Ghana, Nigeria and Rwanda. These incidences, as theory would predict, often coincide with areas of higher population density and pressure on the land. Despite often being outside of the law, such informal transactions of customary land are becoming a common theme across Sub-Saharan Africa.

An Introduction to Private Land Tenure

At the other end of the spectrum there exists individual, private land tenure. Privatisation featured heavily in many past structural adjustment programmes (SAPs); itself advocated for by

the International Monetary Fund (IMF) and World Bank as an essential step towards a country's economic growth (Platteau, 1995; Rodrik, 1990; World Bank, 1989, p.104). Indeed, there were a series of land policy reforms across SSA following independence in the 1960s up until the 1980s which sought to formally institutionalise private property rights (Peters, 2009). Such reforms saw a rise in individual titles with the aim of internalising the externalities of land usage, theoretically providing incentives for productivity-stimulating investments (Demsetz, 1967, cited in Platteau, 1995, p.1). Indeed, it must be noted that many of the post-Second World War contract-farming arrangements in SSA involved privatisation of land for large-scale agriculture projects (Smalley, 2013; Little and Watts, 1994, pp.219-221). As opposed to communal tenure, once titled, land could be used as a form of collateral allowing the owner to access capital for investment. Again, productivity was theorised to increase and an efficient land-market to emerge with lower transaction costs (Toulmin, 2009; Njoh, 2006, p.83). Critics argue that the formation of a free land-market will lead to the poorest in society losing out. They may be pressured to sell their land for 'quick cash', or fail to complete the process for land titling that often requires time, money and a good education (Toulmin, 2009; Benda-Beckmann, 2001).

Competition for Land and Land Tenure

In the face of increasing population densities in Sub-Saharan Africa, private property rights were once again put forward as the only possible solution to impending crises (Platteau, 1995). Given that customary tenure is viewed as insecure under high population densities, the case for a free land-market was strengthened. Advocates of private land tenure argue that only when there is such a market, with freely-tradable property rights, will there be significant increases in agricultural productivity (Peters, 2004; Platteau, 1995).

Similarly, when competition over land becomes fiercer due to agricultural commercialisation or foreign investment there can be consequences on the land tenure system. This has particular relevance with the introduction of outgrower schemes. Whether smallholders sell their produce to a commercial company or to a larger farmer, a more-guaranteed market for their produce through contract-farming will increase competition for the land. The open market value for the land will increase. Some argue that only a private land tenure system will be suitable in such an event, providing security in land rights and a market to freely trade the land. Should the land be held under customary land tenure, there must be a strong institutional framework that will protect customary landholders' rights (FAO, 2012); i.e. enforcement of the law must be strong.

Without this, an informal land-market may develop as the value of the land increases, thus violating customary tenure systems (Chimhowu & Woodhouse, 2006).

Criticisms of Private Land Tenure

The doctrine of private land tenure appeared in expert policy advice and SAPs from independence until the early-1990s. After this the focus began to shift from the importance of individual rights to the importance of secure rights (Quan, 2000, p.38, cited in Peters, 2009, p.1319). In effect, this allowed room for customary land rights to be taken more seriously and as a legitimate means to achieving agricultural productivity. The World Bank began to change its official stance, acknowledging that group rights, as long as they are secure and enforced, may be a strong alternative to private rights (Chimhowu and Woodhouse, 2006). The registration of group rights was considered to be a strong middle-ground whereby customary land tenure may continue to exist whilst the group's rights to the land were protected.

The decades of land reform in Sub-Saharan Africa failed in many cases to establish secure private land rights. This has been explained by a number of factors: firstly, it is often the case that only usufruct rights are registered therefore negating the open market value of the land to its original, customary owner (Chimhowu and Woodhouse, 2006). This means that a system is a lot less likely to be accepted by the local people. Given this, it is considered vital that a just and thorough system for valuing land is established that is protected against corruption and subjectivity. Secondly, the procedure for valuing land and land titling can suit some groups of people, but not others; land may become 'an incident of political and social status' (Platteau, 1995; Gluckman, 1965, cited in Peters, 2009, p.1318). If the valuation and titling process is too costly in terms of time or payment then poorer individuals and groups will be marginalised (Toulmin, 2009). In this same paper, Toulmin (2009) advocates for the roles of local institutions in ensuring universal land tenure security through an accessible land valuation and titling procedure; this procedure should be formally instructed, under strict guidance of the law in order to maintain the people's trust in the system. Thirdly, weak government consensus within a country may have contributed to failed private land rights regimes. Once land rights are established, if they are not supported by an enforced, formally-institutionalised legal framework then their legitimacy at the ground-level can be undermined.

2. Methodology and Data

This thesis analyses the *inclusivity* of contract-farming PPPs in Malawi in light of Malawian land tenure policy. Due to the narrow evidence base on the two sugarcane outgrower schemes it is not possible to use discrete, objective criteria for categorising the term *inclusivity*. Hence, for the purpose of this study, *inclusivity* is defined as the perceived extent to which the operations of a contract-farming PPP include original smallholder farmers. Whenever possible, quantitative evidence is included to support conclusions on *inclusivity*.

The method has three steps: firstly, a two-part model for the two sugarcane outgrower schemes is presented in section 4. Part I: the structure of the outgrower schemes is displayed in Figure 4. This structure highlights the main interactions between various actors. Part II: the stages of the sugarcane expansion programmes are documented in Figure 5. The eight stages outline the land transaction procedure for sugarcane outgrower schemes. Together, Figure 4 and Figure 5 provide the two-part model for the workings of the two sugarcane outgrower schemes. Secondly, in section 5, the theory on land tenure policy is used to predict a mechanism through which the Malawian land tenure policy may affect *inclusivity* of the sugarcane outgrower schemes, given the two-part model. Details of two national agricultural development initiatives – the Greenbelt Initiative and The New Alliance - are also considered. Thirdly, qualitative evidence on the *inclusivity* of the two sugarcane outgrower schemes is drawn upon to support or contradict the predicted, theoretical mechanism.

Due to the relative lack of empirical evidence and previous research on the operation of these schemes, four studies in particular are relied upon heavily: Chinsinga (2017); Landesa (2015); PLAAS (2015); and finally, Landell Mills (2012). Further qualitative evidence is collected from other, minor sources and cited at point of reference. Chinsinga (2017) presents the results of a three-year, qualitative study into the effects of the Greenbelt Initiative on smallholders in Dwangwa. He uses a series of interviews with stakeholders and smallholders, and desk-top research including detailed analysis of Government of Malawi (GoM) policies and speeches. Landesa is a not-for-profit organisation specialising in rural land rights. Landesa (2015) is a study undertaken with Illovo Sugar Limited., focusing on sugar-related land disputes and the resulting impact on relations within the sugar industry. Their methodology includes interviews with

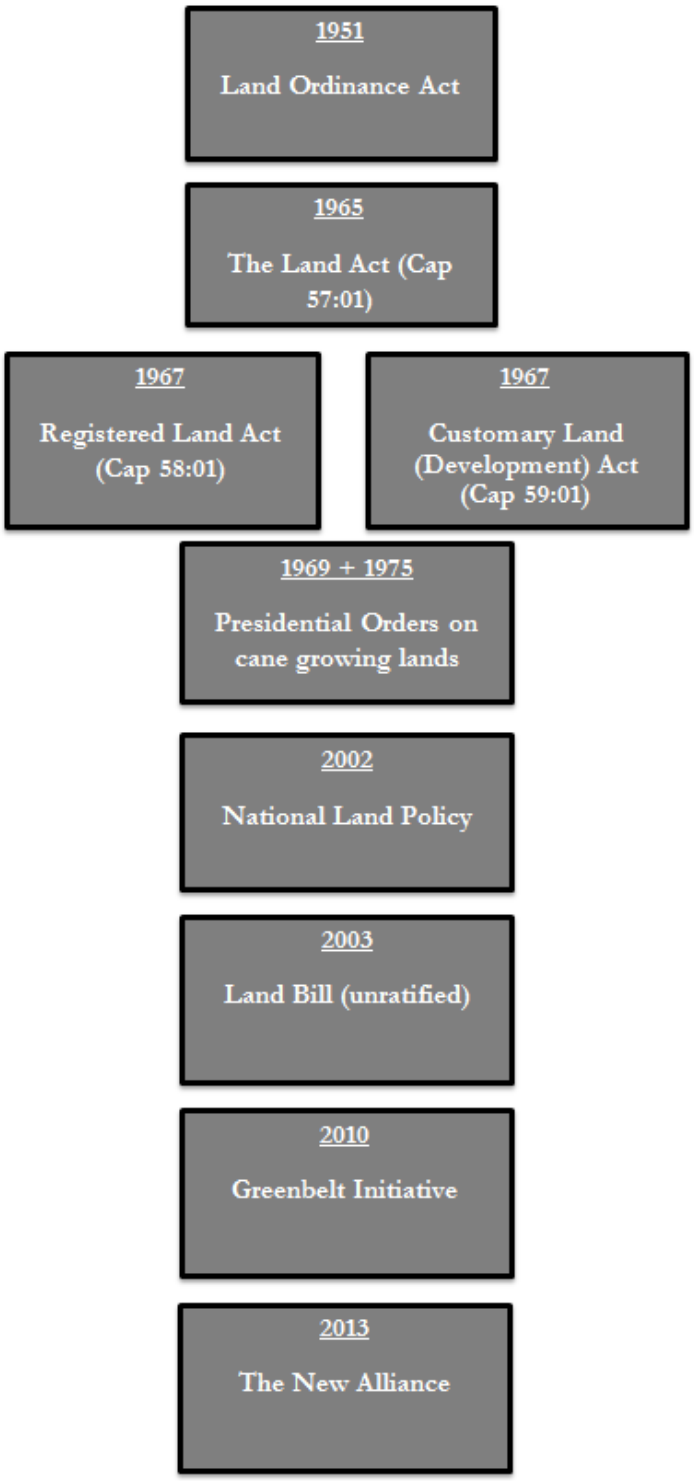
outgrowers, NGO staff, Illovo staff, and local-, regional-, and national-government officials as well as desk-top research into Malawian land tenure. For further information please refer to Landesa (2015, pp.8-9).

PLAAS (2015) provides a policy brief from the University of the Western Cape, highlighting the effects of large-scale land transactions by Dwangwa and Shire Valley Cane Growers Trusts. They present the evidence from 'a mix of qualitative methods … [which] included interviews, focus-group discussions (FGDs), observations and desk-top reviews' (PLAAS, 2015, p.11). The FGDs were with community members who had been displaced by the sugarcane outgrower schemes, between the ages of 15-40 years old, from July to November 2014. One-on-one interviews were with the same individuals. The researchers also carried out observations of the sugarcane outgrower schemes. For more information on the research methods used and on limitations, see PLAAS (2015, pp.11-12). Landell Mills (2012) conducted a European Union (EU)-commissioned report on land allocation procedures in the EU-funded sugarcane outgrower schemes in Malawi. For further information on the interviews and qualitative research conducted by this study, see Landell Mills (2012, pp.43-46).

3. The Malawian National Institutional Framework

The current legal framework for land tenure in Malawi comprises of a combination of Land Acts. The main Acts and their relevance to the sugarcane outgrower schemes will be documented henceforth. Namely, the 1951 Land Ordinance, the 1965 Land Act (Cap 57:01), the 1967 Registered Land Act (Cap 58:01), the 1967 Customary Land (Development) Act (Cap 59:01), the 2002 Malawi National Land Policy, and the (unratified) 2003 Land Bill. The Presidential Orders for cane growing lands of 1969 and 1975 will also be documented. In terms of land valuation and compensation frameworks, the 1965 Land Act (Cap 57:01, Sections 27 and 28) and the 1967 Customary Land (Development) Act are of relevance. Furthermore, two national agricultural development initiatives – the Greenbelt Initiative and The New Alliance- are outlined for their impact on the sugarcane outgrower schemes in question. A timeline of these documents is given for clarity in Figure 3. All land valuation, transaction and compensation procedures are the responsibility of the Ministry of Lands and Housing (MLH) at both the national and the regional levels (Landell Mills, 2012).

Figure 3: Timeline of applicable Malawian Land Acts, policies and agricultural development *initiatives.*



Source: Landell Mills (2012), Malawi National Land Policy (2002), The Presidential Commission (1999)

National Land Acts, pre-2002

In 1951, the British outlined the Land Ordinance for Nyasaland (now Malawi) categorising land tenure into three categories: public, private and customary (Malawi National Land Policy, 2002, p.8). The private land was used mainly for tobacco, tea and sugarcane plantations for export to Western markets (Kishindo, 2004). Customary land was reserved for Malawian citizens who were effectively 'tenants on their own land' as they were only granted usufruct and occupancy rights (Malawi National Land Policy, 2002, p.8). Malawi was granted independence on the 6th July 1964 and the following year, the 1965 Land Act was passed. The colonial categorisation of land tenure was reinforced in the 1965 Land Act (Cap 57:01, Section 2) which defined private land – held under freehold or leasehold title-, customary land – owned by the people of Malawi under customary law-, and public land – owned by the Government and not within the former two categories -(Kishindo, 2004). According to the 1965 Land Act, customary land rights only cover occupancy and usufruct rights (Cap 57:01, Section 26). With the addition of the Registered Land Act in 1967, the definition of private land was extended: 'land held under a freehold title, or a leasehold title, or … registered as private land under the Registered Land Act' (Cap 58:01, Section 2, cited in Silungwe, 2009, p.10).

The Malawi National Land Policy (2002) states that the 1965 Land Act did nothing to change colonial-era insecurity of customary land rights as individual users were again denied the right to register the land as their own. Linked to this, the 1965 Land Act vests all customary and public land in the State under the President (Land Act, 1965, Cap 57:01, Sections 2 and 25). This formally gives the State the legal rights to convert customary land to private, leasehold land (for up to 99 years) as Government sees appropriate (Land Act, 1965, Cap 57:01, Sections 5 and 27). Should this happen, the Government is legally obliged to pay compensation 'as shall be reasonable' to the original users of the customary land (Land Act, 1965, Cap 57:01, Section 28, p.11), normally the land-equivalent value of compensation has been paid to people evicted in this manner (Landell Mills, 2012). Should the land acquisition occur by a body other than the state, compensation must be paid up front, upon which the rights to the land are transferred (Land Act, 1965, Cap 57:01, Section 28). Indeed, between 1964 and 1976, when the mainstream advice from the international community was to implement private land rights, the Government converted 749,000 ha of customary land to private land, registered under leasehold title (Landell Mills, 2012). In the six years leading up to 1987, a further 400,000 hectares of leasehold land was created out of customary land and this figure has grown significantly since (World Bank, 1987, cited in Kishindo, 2004, p.215). In 1964, 85% of Malawi was customary land and this figure was

already as low as 69% by the early 1990s (Landell Mills, 2012).The terms outlined under the 1967 Registered Land Act facilitate this conversion of customary land to private land (Registered Land Act, 1967, Cap 58:01).

Land that has been officially declared a 'development' area may legally be converted by the customary users to private land under leasehold title, according to the Customary Land (Development) Act (Cap 59:01) and the Registered (Land) Act (Cap 58:01). This technically allows customary land users to apply to the Traditional Authorities and MLH, for certificates to their parcel of land, functioning as a 'simplified leasehold system' (Landell Mills, 2012, p.12). However, only land in the Lilongwe West area of Lilongwe district has been declared as a development area in this respect, and even there registration rates were low (Malawian National Land Policy, 2002): by 1972 only one individual had registered a land holding in this manner (Silungwe, 2009). The Government described this element of the Customary Land (Development) Act as more of 'an incomplete experiment' than a successful land reform policy (Malawi National Land Policy, 2002, p.8).

In the event of proposed customary land acquisition, the Traditional Authority may govern a customary land committee (often known as a development committee) to oversee this process (Malawi National Land Policy, 2002). As has been mentioned, customary land acquisition by a private individual or firm must be preceded by the payment of compensation (Land Act, 1965, Cap 57:01, Section 28). Land valuation is undergone by the Ministry of Lands and Housing, according to the Land Act (1965, Cap 57:01, Sections 27 and 28) and the Customary Land (Development) Act (1967, Cap 59:01). However, it has been noted that the MLH has neither formal procedure nor official protocol for the valuation of lands (Landell Mills, 2012). This conveys the sentiment that the valuation process is susceptible to a certain level of subjectivity, and therefore inconsistency in compensation paid. As has been mentioned, the land-equivalent is often paid as form of compensation (Landell Mills, 2012). Lands are valued based on their usufruct-value for that current season, i.e. current infrastructure, buildings and plants – crops and trees. The open market value of the land, which would consider future crops and sugarcane production, for example, is not strictly taken into consideration (Malawi National Land Policy, 2002). Hence, the Malawian land tenure framework, as based on the 1965 Land Act, does not recognise the open market value of customary land (PLAAS, 2015; Malawi National Land Policy, 2002).

The 1967 Customary Land (Development) Act places all customary land in the custody of Traditional Authorities (Malawi National Land Policy, 2002)– yet the legal right still ultimately lies in the State as per the 1965 Land Act, Cap 57:01, Sections 2 and 25. Chiefs may only allocate usufruct or occupancy rights to the land; it may not be sold or leased by Traditional Authorities. Most often the allocation of these rights is based on kinship with both matrilineal and patrilineal systems - present in the South and North of Malawi respectively – determining the individual in whose name the right lies (Peters, 1997). If a stranger moves into the area they may be allocated usufruct land rights as long as they find favour with the chief; this emphasises the importance of 'social contracts' (de Soto, 2000, p.112). The current situation has been critiqued. Many chiefs have been accused of violating their roles as custodians of the land and of acting as if the land were their own (Kishindo, 2004). The Presidential Commission on Land Policy Reform (1999) reported numerous occasions where chiefs had illegally sold land, some of which was already under cultivation. The request of thankyou gifts (*chothokoza*) by some Malawian chiefs – either off strangers hoping to find favour, or off original community members - has rendered them 'landlords in the guise of tradition' (Peters, 2009, p.1321).

The 2002 Land Policy and 2003 Land Bill

The year 1994 was an important year for Malawi with the introduction of multi-party politics. The newly-elected Bakili Muluzi ordered a Presidential Commission of Inquiry on Land Policy Reform in 1995, which submitted its findings four years later in 1999 (The Presidential Commission, 1999). Using these findings, a Land Policy report was finalised by Government in 2002 (Malawi National Land Policy, 2002). Despite this, the supporting 2003 Land Bill which was drafted the year later has still not been approved by Government. Thus the 2002 Land Policy is not supported in law, and is overruled by the 1965 Land Act. Crucially, the 2003 Land Bill would permit the legal registration of customary land and its transactions thus granting individual title to customary land (Landell Mills, 2012; Malawi National Land Policy, 2002, p.29). Therefore, whilst Traditional Authorities would still maintain their status as guardians of customary land, the 2003 Land Bill would see private leases lie with individuals and households (Malawi National Land Policy, 2002, p.28). The open market value of customary land would be used in order to value land ahead of transactions (Malawi National Land Policy, 2002, p.12)

The failure by Government to approve the 2003 Land Bill has been dubbed a political impasse by many critics who note such a Bill would remove certain powers from political elites (Chinsinga, 2017; FAC, 2012; Peters and Kambewa, 2007)). Not only political elites, but Traditional Authorities have also expressed dissent against the 2003 Land Bill as they too fear losing power with its implementation (Chinsinga, 2017; Kishindo, 2004). Hence, customary land is still subject to the legal framework of the 1965 and 1967 Acts, vesting all customary land in the State and failing to recognise individual title within customary land (FAC, 2012; Chinsinga, 2011; Silungwe, 2009; Land Act, 1965, Cap 57:01).

The Greenbelt Initiative and The New Alliance for Food Security and Nutrition

In 2010, the Government of Malawi officially announced the Greenbelt Initiative (GBI) to promote agricultural productivity and increase food security within the country. Not only this, but increasing both crop diversification (away from tobacco) and agricultural exports are also major objectives of the Ministry of Agriculture (MoA) (FAC, 2012). Facilitating large-scale, commercial agriculture with an increased private sector share is the foundation of the GBI. The Government Ministry of Lands and Housing has offered one million hectares of land to private, Malawian and international investors, all within twenty kilometres of the country's three largest lakes or thirteen major rivers (Chinsinga and Chasukwa, 2012). However, the Government realises that this will ultimately involve conversion of customary land: *"Large growers will have to engage in discussions with local assemblies to relocate villages for intensified farming by using heavy machinery",* (Ministry of Agriculture, 2009: iii-iv, cited in FAC, 2012, p.2). Given that the Government is seemingly not shy about the potential for moving whole villages, there is extant controversy over the GBI (Mpaka, 2014; Chinsinga and Chasukwa, 2012).

The New Alliance for Food Security and Nutrition (The New Alliance) is an international level initiative set-up in 2012 with the end-goal of lifting 50 million people out of poverty by 2022. The aim was to 'achieve sustained *inclusive*, agriculture-led growth' in African states through policy-reform, private investment and donor funds (The New Alliance, 2015a, p.36, italics my own). The New Alliance links African governments with private entities and donor organisations, each partner agreeing to certain terms. Governments agree to a set of nation-specific commitments. Most often, these are policy reforms in order to promote agricultural investment. The private entities must guarantee a certain level of investment into the agricultural sector of their partner African state (The New Alliance, 2015a). The donor organisations must

commit to a set amount of annual funding to the agricultural sector of the country. The three types of partners have to submit annual progress reports as a form of accountability and proof of commitment (The New Alliance, 2015a). In effect, The New Alliance orchestrates large-scale, public-private partnerships with the additional help of donor funding, within African states.

Malawi joined The New Alliance in 2013, partnered with the European Union as the lead donor organisation (The New Alliance, 2015b). The EU has pledged €2.4 million for smallholders' expansion and training in the Dwangwa and Nchalo outgrower schemes (Richardson, 2010). With respect to private sector investment, 26 private entities have committed to investing in the Malawian agricultural sector which has a particular emphasis given to outgrower schemes (The New Alliance, 2015b). The largest commitment came from Illovo Sugar Group which has pledged a capital investment of approximately US$30 million for production increases (The New Alliance, 2015b). This will involve leasehold estate expansion in line with the GBI and Presidential Orders of 1969 and 1975. These relationships are outlined once again in Figure 4. Monsanto was also listed as a private partner in The New Alliance for Malawi (The New Alliance, 2015b).

The Government's nation-specific commitments include 33 policy reform pledges with the aim to create a friendlier environment for private agricultural investment and agri-business (Chinsinga, 2017). Item 4 on the list of country-specific government commitments for Malawi is to 'develop strategy and legislation for contract farming' (The New Alliance, 2015b, p.5). The sugar industry in particular is targeted by the government for these investments. The GBI has been incorporated as part of the Government's commitments within The New Alliance. Given this, the Government was committed to putting forward 200,000 ha of 'idle' land for long-term leaseholds by 2015, solely for the purpose of large-scale commercial agriculture (PLAAS, 2015, p7). Yet, it was clear by 2014 that this target was not going to be met and so the new date is 2018 (The New Alliance, 2015b). Critics argue that the 200,000 ha of 'idle' land will have to include customary land which is currently used and relied upon by smallholder farmers (Chinsinga, 2017; PLAAS, 2015; FAC, 2012; Chingaipe et al., 2011). Some take this further, arguing that the smallholder farmers who currently use this customary land provide a major source of food for the Malawian population. It is possible that by permitting large-scale, commercial sugarcane and oil-seed plantations on this land, Malawi is in fact increasing food insecurity and dependence.

The Presidential Orders of 1969 and 1975

These two Presidential Orders stem from the Government's plan to diversify crops away from tobacco and to capitalise further on the high levels of profitability of sugarcane production in Malawi (Chinsinga, 2017; Illovo, 2014). The Orders are in the form of editions to the 1965 Land Act and permit the conversion of customary land to sugarcane plantation: 8,788ha in Nchalo and 48,750ha in Dwangwa (Land Act, 1965, Cap 57:01 Kasinthula Irrigation Order 30/1969, cited in Landell Mills, 2012, p.13; Land Act, 1965, Cap 57:01 Dwangwa Sugar Project Order 178/1975, cited in Landell Mills, 2012, p.13).

In Dwangwa, at the time of allocation, some families were forcefully displaced from their land whereas others remained behind. Yet, the length of time that passed between this eviction and the establishment of the sugarcane plantations was long enough that many families migrated (back) into the area (Landesa, 2015; Landell Mills, 2012). According to Malawian land law, a settler may claim usufruct rights after 12 years (Landell Mills, 2012); these families have been occupying this land for a longer time period than that. On top of this, the Government has since 'reallocated' and offered a large section of these 48,750 ha for commercial leaseholds under the GBI (Chinsinga, 2017). These acres in Dwangwa are therefore governed by a range of differing Orders.

4. The Malawian Sugar Industry: a Two-Part Model

Illovo Sugar Malawi

In 1963, the first President of Malawi, Dr Hastings Banda, invited the British company Lonrho Sugar Corporation (Lonrho) to invest in the Malawian sugar industry in Nchalo, Chikwawa District (Gosnell, 2005). By 1965, the Government had granted Lonrho with a long-term leasehold for the irrigated sugarcane plantation project in Nchalo (Appendix 2). In the following three decades, the company grew at an unprecedented rate across many countries in SSA, including expansion within Malawi to leasehold land in Dwangwa, Nkhotakota District in 1970 (Appendix 2). Lonrho installed sugar mills at each of its Malawian estates. In 1997, Lonrho Sugar Corporation (including the two Malawian leasehold estates) was sold to Illovo Sugar Group for US$370 million (Gosnell, 2005). Illovo Sugar Malawi is a subsidiary company of Illovo Sugar Group, a South African company which operates in six Sub-Saharan African countries. Illovo Sugar Group is part of the British conglomerate, Associated British Foods plc.

Sugarcane is of great importance to the Malawian national economy. Illovo Sugar Malawi (herein Illovo) directly employs 11,552 people and supports a further 3,434 outgrowers; estimating that its operations in Malawi contribute approximately 10% of the country's GDP and cause Illovo to be the 'single biggest taxpayer in the country' (Illovo, 2014. p.1). Illovo is also one of the largest private investors in the Malawian agricultural sector with The New Alliance partnership (Illovo, 2014). The Malawian sugar industry is extremely competitive at both an African and international level: of Illovo Sugar Group's operations in six SSA countries, Malawi is the most profitable country, contributing approximately 40% of the company's total profits (Chinsinga, 2017).

Within Malawi, Illovo still owns and runs the two mills which are both situated within the irrigated Illovo estates purchased from Lonrho in 1997 (Appendix 2). Illovo has the long-term leases for these two estates (Landesa, 2015). There is controversy over these leases as some locals argue that the initial granting of leases to Lonrho by the Government was both unlawful and forceful (Landesa, 2015; Mtika, 2014). In 2013, Illovo decided to take the matter to court and Illovo's legal status as the rightful leaseholder of the land was confirmed (Landesa, 2015; Mtika, 2014). The details of the controversies over Illovo's two leasehold estates are not central theme to the current paper which has its focus in outgrower schemes; more information can be found in Chinsinga (2017); Landesa (2015); Illovo (2014); Mtika (2014).

As the owner of the only two sugar mills in Malawi, and operating on 19,521 ha of irrigated estate, Illovo is the main stakeholder in the sugar industry. This, combined with Malawian law that prohibits the import of sugar, grants Illovo a monopoly on both the domestic market and export of sugar (Landesa, 2015; Illovo, 2014; Landell Mills, 2012). Of the sugar produced in Malawi, 81% comes from Illovo's own estates and the remaining 19% from outgrowers (Illovo, 2014). Illovo charges the outgrowers 40% of the returns on the sugarcane as a milling fee (von Maltitz, 2017). Of these outgrowers, 90% of the sugarcane produced is by smallholders; the remaining 10% of outgrower sugarcane comes from the Kaombe Community Farm Trust (Illovo, 2014). The smallholders are either independent growers, members of outgrower associations – of which there are 12 in Dwangwa (von Maltitz, 2017) –, or participating in the case study Dwangwa or Nchalo sugarcane outgrower schemes via outgrower management companies.

Outgrower Management Companies and Trusts

From 1965, the Government created a series of public or parastatal organisations to manage outgrowers surrounding Lonrho's two estates. One such organisation was the Smallholder Sugar Authority (SHSA) who sub-leased 500ha from Lonrho's Dwangwa estate for smallholder farmers (Chinsinga, 2017; Gosnell, 2005). By 1988, these organisations had all been privatised; Illovo Sugar Group purchased the majority of shares. The SHSA was privatised into two separate entities - the Dwangwa Cane Growers Trust (DCGT) and Dwangwa Cane Growers Limited (Ltd.) (DCGL) –with most shares sold to the former (public sector) employees (Chinsinga, 2017; Landell Mills 2012). These two organisations oversee the Dwangwa sugarcane outgrower scheme, they are highly linked - to the extent where is its often hard to differentiate between the individual roles of both organisations. Even on the board of directors, there is a high level of overlap between the DCGT and DCGL: 40% of individuals sit on both boards, including the two chairpersons as well as most managerial staff in the Trust having shares in the Ltd. outgrower management company (OMC)(Chinsinga, 2017, p.512).

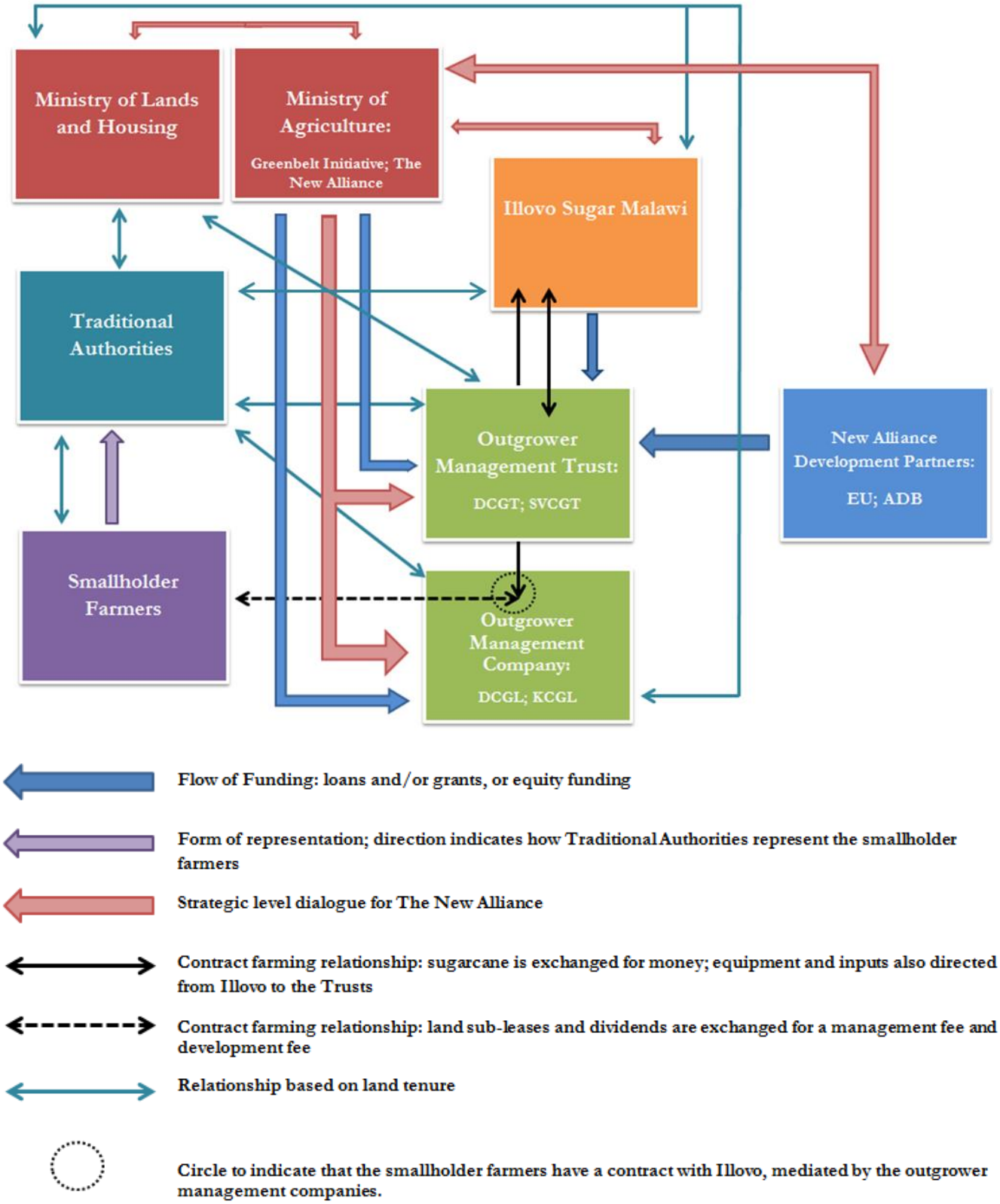
The Nchalo sugarcane outgrower scheme is also managed by an outgrower management Trust that is closely linked with an OMC. However, in Nchalo, the Shire Valley Cane Growers Trust (SVCGT) was set-up by the Government of Malawi, as opposed to the privatisation of a government authority (the SHSA) in Dwangwa (Fairtrade Foundation, 2017; Landell Mills, 2012). The SVCGT in turn, set-up and owns 95% of shares in Kasinthula Cane Growers Ltd.

(KCGL) (Landell Mills, 2012). Again, there is a high level of overlap between the Boards as 6 of the 10 Trustees are also Directors; there are 8 Directors in total (Landell Mills, 2012, p.6). As with the Dwangwa sugarcane outgrower scheme it is hard to distinguish between the roles played by these two Nchalo organisations.

The majority of smallholders have contracts with the OMCs: Dwangwa Cane Growers Ltd. And Kasinthula Cane Growers Ltd. Outgrower management companies work to collate smallholder farmers' land into a sugarcane outgrower scheme with the intent of increasing productivity. With this aim, the OMCs manage the sugarcane production logistics and supply of inputs, and negotiate land deals and sub-contracts with the local people (Chinsinga, 2017). On top of this, the OMCs represent the smallholders through the sale of sugar to Illovo. A secondary aim of the OMCs is to facilitate the expansion of outgrower schemes with outgrower expansion programmes (Landell Mills, 2012) (Figure 5).

With respect to the set-up of the outgrower schemes, a nucleus-estate model is followed whereby farmers near the borders of Illovo's estates sell sugarcane to the company. Part I of the two-part model displays the structure of outgrower schemes and interactions between actors at all levels (Figure 4). Part II outlines the eight stages involved in outgrower expansion programmes (Figure 5).

Figure 4: Part I of the two-part model. The structure of sugarcane outgrower schemes in Malawi.



Modified from Fairtrade Foundation (2014, p.19).

The Government of Malawi

This structure of the sugarcane outgrower schemes highlights their status as contract-farming public-private partnerships (Fairtrade Foundation, 2014). The formal interactions amount to official partnerships between smallholder farmers, private Limited companies (outgrower management companies) and Illovo Sugar Malawi. The Malawian Government is involved under the aegis of The New Alliance at the international level and therefore the Greenbelt Initiative at the national level. In this respect, it may be said that the Government is the main orchestrator of the schemes. The Government helps to promote and facilitate such partnerships in three main ways: government financial support, securing of funds via strategic level dialogue for The New Alliance, and land negotiations by the MLH.

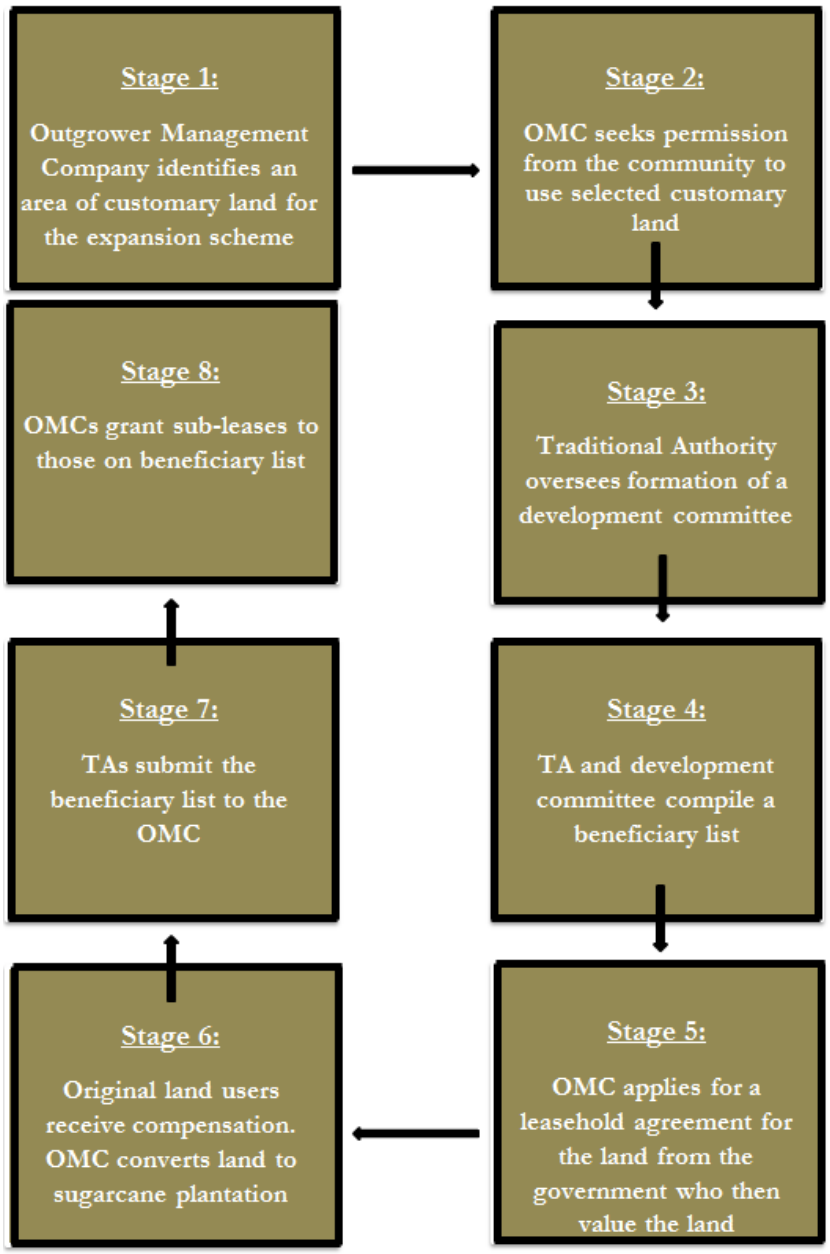
Financial support from the Government has come about in two main formats. Firstly, the MoA has loaned money to the two private outgrower management companies – Dwangwa Cane Growers Ltd. and Kasinthula Cane Growers Ltd. - that manage the sugarcane outgrower scheme in their respective area. Secondly, the Government has awarded grants to these companies in order to promote sugarcane expansion programmes (Chinsinga, 2017). Via strategic level dialogue, The New Alliance has been influential in the expansion of the sugarcane industry, with the MoA channelling EU and donor funds into the two outgrower management Trusts: the Shire Valley Cane Growers Trust and The Dwangwa Cane Growers Trust (Chinsinga, 2017; Landell Mills, 2012). For example, in 2011, the EU granted £150,000 to the Nchalo scheme (matched by the KCGL) for an outgrower expansion programme of 400ha (Fairtrade Foundation, 2017). During initial talks for The New Alliance, the Government was instrumental in the negotiations of Illovo's investment into the outgrower management Trusts. Lastly, the Government MLH facilitates the outgrower management schemes' operations through the land transaction and land negotiation process. The Government may identify land that is to be released for large-scale agricultural investment under the GBI, and this is put forward as leasehold land to the OMCs. Or more commonly, the companies themselves identify land for sugarcane expansion programmes and apply for a lease from the MLH.

The Traditional Authorities

The Traditional Authorities are crucial to the smooth operating of the sugarcane outgrower schemes and their related expansion programmes (Figure 5). Originally, the DCGT cultivated sugarcane on 500ha of land sub-leased from the Illovo Dwangwa estate (Chinsinga, 2017; PLAAS, 2015). However, with subsequent outgrower expansion programmes, in 2006 it became

necessary to grow sugarcane on customary land. Similarly, in Nchalo, the outgrower scheme now operates on land that was originally customary. As custodians of this land, Traditional Authorities are able to grant land usage rights according to the 1967 Customary Land (Development) Act, and are therefore key in the negotiation process with the OMCs. Chinsinga (2017) notes how the Government, under such initiatives as the GBI and The New Alliance, pledge that multiple hectares of land will be released for agricultural investment and schemes such as the sugarcane outgrower expansion programmes. Yet, the Government is less clear as to which parcels of land these policies actually refer. Given this, it is even more important that the chiefs are 'on board' with the programmes. The chiefs are the voice of the people, representing the interests of those whose land has been selected for sugarcane cultivation. Illovo's main point of contact with the community, aside from going through the OMCs, is with the chiefs (Landesa, 2015). The same can be said for when the OMCs and Government wish to pass information to the people.

Figure 5: Part II of the two-part model. The 8 main stages in the sugarcane outgrower expansion programme.



Source: Chinsinga (2017) and Landell Mills (2012)

The Stages of the sugarcane outgrower expansion programme are adapted from Chinsinga (2017) and Landell Mills (2012) and take approximately 3 and a half years to be finalised. Each stage is in accordance with the Malawian land tenure framework outlined in Section 3. Proceedings in Dwangwa and Nchalo are very similar with any specific differences mentioned in further discussion.

The first stage in the outgrower expansion programme involves the OMC identifying the area of land that it sees fit for sugarcane cultivation (Figure 5, Stage 1). Once identified, the OMC must seek permission from the community to use the land (Stage 2). This is done via the Traditional Authority who holds custody of the land. Providing that the community approves, the Traditional Authority oversees the formation of a development committee (Stage 3). With the Traditional Authority, it is one of the development committee's roles to compile a list of the current land users who will offer their land for 'development'; this list is known as the Beneficiary List (Stage 4).

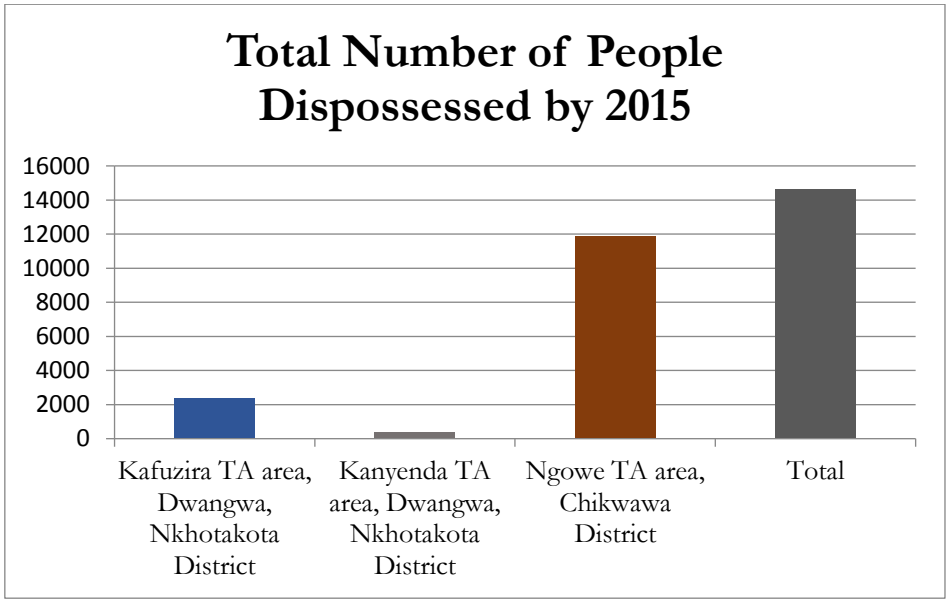
The OMC will then go to the Government MLH to draw up a lease contract lasting 30 years. This is done on behalf of the farmers, although the land – which is partitioned into 40ha parcels – is registered under titles held by the OMC. Prior to this, the MLH will value the land (Stage 5). Compensation is given to the original land users, upon which the rights pass to the OMC, which will convert the land and prepare it for sugarcane cultivation (Stage 6). The beneficiary list is submitted by the Traditional Authority to the OMC (Stage 7). Farmers from the list receive individual sub-leases from the OMC for up to five years, in accordance with how much land they originally offered to the programme (Stage 8). This sub-lease comes into effect after the first full sugarcane harvest.

Given this, the sugarcane expansion programmes can be generalised as a conversion of customary land to private land held under leasehold title by the OMCs. Through inclusion on the beneficiary list, the original customary land users should receive compensation for this conversion (Stage 6) and a sub-lease to individual plots of land (Stage 8). Being in possession of a sub-lease entitles one to financial benefits from the OMC, once the sugarcane plantation begins to make money. In reality, the sub-leases are comparable to shares in the OMC (Landell Mills, 2012). Owners of sub-leases must also pay a management fee to the company which, in Dwangwa is 22.5%, and also a development fee to help pay-off loans taken out by the OMCs (von Maltitz, 2017). These costs are deducted from the final dividends given to those with sub-leases. The farmers' average net return on the sugarcane in Dwangwa is 23% (von Maltitz, 2017).

5. Analysis

The two-part model outlining the structure and stages of sugarcane outgrower schemes has been outlined. Previous research into the Dwangwa sugarcane outgrower scheme has found evidence of higher household welfare and lower levels of income poverty in households that participate in the scheme, in comparison with non-participants in the same area (Mudumbi et al., 2016; Herrmann and Grote, 2015). Yet these studies failed to consider the *inclusivity* of the schemes and to analyse further the apparent land conflicts. According to one estimate, the two sugarcane outgrower schemes in question may have led to the dispossession of over 14,600 community members (PLAAS, 2015) (Figure 6). It is predicted that the *inclusivity* of these schemes – the perceived extent to which the operations of a contract-farming PPP include original smallholder farmers – is affected by the Malawian national institutional framework for land tenure. Similarly with the Government's agricultural development initiatives – the GBI and The New Alliance-; it is predicted that they will also affect the *inclusivity* of the sugarcane outgrower schemes.

Figure 6: Total Number of People Estimated to Have Been Dispossessed by 2015: graph sorted by sugarcane growing area and by association, mode of dispossession.



Source: PLAAS (2015, p.6).

In Kafuzira, Dwangwa, the outgrower expansion programmes of Kasitu and Mtupi may have led to the dispossession of 2,362 people. In Kanyenda, Dwangwa, the conversion of the entire Kazilira *dambo* reportedly dispossessed 376 people. Lastly, in Ngowe, Nchalo, 11,874 people are

said to have lost their land through large-scale farming land transactions. A total of 14,612 community members – 8,019 men and 6,593 women – are reported to have lost their land through these two sugarcane outgrower schemes in Malawi. It is possible that the regional differences in these figures reflect the respective population densities of the Central and Southern Regions of Malawi respectively.

The Nucleus-Estate Format

The Dwangwa and Nchalo sugarcane outgrower schemes are both examples of contract-farming PPPs that implement a nucleus-estate model. The presence of a more-guaranteed market to which smallholders can sell their crop will drive up competition for their land. Theory predicts increased migration to these areas surrounding the estates, and a subsequent rise in the open market value of the smallholders' customary land. Chimhowu and Woodhouse (2006) describe how these dynamics may lead to the development of an informal land-market on customary land. Many scholars argue that customary land rights which are not individually recognised – such as the current framework in Malawi (Malawi National Land Policy, 2002; Land Act, 1965, Cap 57:01, Section 26, 1965)-, are insecure in the face of increasing population pressure (Toulmin, 2009; World Bank, 1989, p.104). This may result in the poorer individuals losing their land to influential migrants, and in sugarcane outgrower schemes that are not *inclusive* in their nature.

Evidence from the two outgrower schemes appears to support these predictions. Illovo (2014, p.14) refers to its two estates as 'islands of prosperity [which have] attracted large amounts of migrants'. Indeed, Landesa (2015) note how there is increased competition for land on both of the estates' boundaries. Negative implications of this for the *inclusivity* of the sugarcane outgrower schemes have been alluded too. Smallholders participating in the Nchalo scheme complain of new people claiming rights to their land under sugarcane cultivation: "*they have on the [beneficiary] list names of people who did not participate in the scheme and hence our money is divided against a number that is not real"* – affected farmer from Nchalo, interviewed for PLAAS (2015, p.15). This implies that the dividends of the outgrower scheme are not as large as the original customary land users expected. An EU Strategic Environmental Assessment Report documents many 'strangers' with sugarcane plantations in the areas of customary land surrounding the estates (Strategic Environmental Assessment, 2010, cited in Landell Mills, 2012, p.19). It appears as though the increasing competition for land resulting from nucleus-estate contract farming is putting pressure on these customary land areas; resulting *inclusivity* of the schemes seems to be negatively affected.

Increased migration is not only causing disputes on customary land: Landesa (2015), Landell Mills (2012) and Kishindo (2004) all document cases of encroachment by land-hungry, smallholders onto customary, public and private lands including the Illovo estates. Similarly, Landesa (2015) documents a case in Nchalo where the Regional Commissioner for Lands and the District Commissioner surveyed Illovo's estates' boundaries in 2014. There were areas where the community had encroached on the estates, and where Illovo had encroached on areas of customary land (Landesa, 2015, p.31). This confusion was due to the distinct lack of marked borders and inconsistency between land allocated under the Presidential Orders of 1969 and 1975. Failure of the MLH to deal with such encroachments even on private lands, suggests a national land tenure framework that is not fully enforced.

The Greenbelt Initiative and The New Alliance

Both the Dwangwa and Nchalo Sugarcane Outgrower Schemes must be analysed in light of the GBI and New Alliance. With their combined target of offering over one million hectares of land for large-scale agricultural investment, the GBI and New Alliance have greatly facilitated the OMCs' acquisition of large areas of customary land for sugarcane plantation (Chinsinga, 2017; Mpaka, 2016; PLAAS, 2015; Chinsinga and Chasukwa, 2012; Chingaipe et al., 2011). With this in mind, the motivations of individual groups may be better interpreted. Every year, the Malawian Government, partner donor organisations and private investors have to submit an annual report on progress with The New Alliance. This places external pressure on the Government to ensure a friendly environment for agribusiness is enforced and that agricultural investment into (customary) land is continuing. Not only is there international pressure, but the financial incentives that are in place further motivate stakeholders that these policies are seen through. Given this, these two agricultural development initiatives are at risk of exacerbating problems existent in the Malawian customary land tenure framework and have already been accused of facilitating land grabs around Malawi's major lakes and river basins (Chinsinga, 2017; Mpaka, 2016; Chinsinga and Chasukwa, 2012; Chingaipe et al., 2011; Chinsinga, 2011). Thus it is likely that these agricultural development initiatives are exaggerating any potential negative effect on the *inclusivity* of the Dwangwa and Nchalo sugarcane outgrower schemes as case studies of contract-farming PPPs. The National Coordinator for LandNet, Emmanuel Mlaka, stated how the organisation is "*in support of the [GBI] investments but we are not in support of the methodology which is not inclusive and not consultative*" (Mlaka, 2016, cited in Mpaka, 2016). However, one must still also

analyse the land tenure framework in order to interpret the means through which this potential reduction in *inclusivity* may be facilitated.

Both DCGL and KCGL have taken out a series of loans, many contracted by the Malawian Government through The New Alliance negotiations (Chinsinga, 2017; Fairtrade Foundation, 2014). Kasinthula Cane Growers' Limited is under a severe amount of debt having taken out a large loan in order to finance irrigation systems. Due to the Malawian Kwacha devaluing against the US dollar, interest rates have reached above 40% in previous years (Fairtrade Foundation, 2017). These financial difficulties had a serious effect on the smallholder farmers who possessed sub-leases from the company and rely on their dividends for sources of income (Fairtrade Foundation, 2017; Landell Mills, 2012). There have been occasions when the DCGT may have converted customary land to leasehold land without the consent of the community. Chinsinga (2017, p.510) documents the case whereby the DCGT prepared the entire Kazilira *dambo* for sugarcane plantation by removing all the community's standing crops. In reality, only a certain percentage of the land had been offered for participation in the expansion programme and 376 smallholders are assumed to have been dispossessed in this manner (Figure 6). The DCGT and DCGL are not just under pressure from the Government to convert a certain amount of land in order to meet The New Alliance targets. Both the Trust and the company received a large amount of national and international financing to support their scheme. In this case whereby the whole Kazilira *dambo* was converted, apparently without permission from many of the current land users, the DCGT had already secured loans under the assumption that the whole *dambo* would indeed be converted (Chinsinga, 2017).

Given this, the OMCs are reliant upon the continued conversion of customary land to sugarcane outgrower plantations in order to function. Smallholder farmer participation is technically voluntary and DCGT still claim that this is the reality. There are many cases whereby this is indeed true, yet there is clear evidence of incidences where it is certainly false. According to Richardson (2010), DCGL would struggle as a functioning outgrower management company were all its smallholders to be voluntary participants. This financial pressure on the OMCs is a likely contributor to decreased *inclusivity* of the sugarcane outgrower schemes through exaggerating the potential negative effects of an unsuitable land tenure framework.

Smallholder Representation in the Outgrower Schemes

Part I of the model – the structure of the outgrower schemes – shows how smallholders have only one full link between themselves and the rest of the scheme. This is through their representation by the Traditional Authorities who engage in land-based discussion with the OMCs, Trusts and Illovo. This structure is a consequence of the 1967 Customary Land (Development) Act authorizing TAs as the custodians of customary land (Malawi National Land Policy, 2002). The majority of negotiations regarding the outgrower schemes and their expansion are done at a strategic level in light of The New Alliance. Given this, the sugarcane outgrower schemes have been criticised for their lack of smallholder participation in the planning and implementation process (Chinsinga, 2017; Landesa, 2015). Past studies on contract-farming PPPs have shown that such a demand-driven nature can lead to reduced *inclusivity* in the outcomes of the partnerships (Fairtrade Foundation, 2014) and so this is also predicted to be the case here.

Such a structure may not fully permit a bi-directional flow of information between TAs and customary land users. This may be due to the lack of formal procedures in place to permit that flow and a lack of accountability of the TAs. In Dwangwa, Traditional Authorities are meant to pass on information from DCGL, the DCGT and from Illovo to their people; this may seldom be the case in reality. Interview data from local people in Dwangwa suggests that many villagers were uninformed about the sugarcane expansion programme:

> *We were surprised to see tractors belonging to the Dwangwa Cane Growers's Trust encroaching into our fields. This was in the year 2009 and when we enquired, we were told that the chief had ordered that all our land be used for the development project for growing sugarcane which our government had directed. … nobody was consulted or briefed about this idea, including the Chief's subjects. It is only the senior chief who was involved and we didn't know.* – Frojala Kaunda, Chairperson of Kasitu Mukhotu Farming Group, interviewed in 2014, in PLAAS (2015, p.13).

There appears to have been a lack of communication from the senior TAs to the villagers regarding this particular expansion programme. This implies that the expansion programme was not *inclusive* as it may have occurred without the permission of the villagers on customary land.

Often, when there has been communication between the companies and the villagers via the TAs, the nature of this communication has not appeared conducive for an *inclusive* PPP for two main reasons. Firstly, whilst the meetings between the OMCs and the Traditional Authority may

well be 'participatory', the subsequent interactions between the TA and the people have been described more as orders than the spreading of information: in Dwangwa, "*Chiefs from senior Chief Kanyenda's office made it clear that to us whether we like it or not, we must start growing sugarcane"* – interview with Mtupi Village Headman cum smallholder farmer in PLAAS (2015, p.13). Local people may feel like they don't have a choice in offering their land to be part of the expansion programme. Secondly, information given was potentially incorrect, or incomplete. Many smallholders who did agree to participate in the sugarcane expansion programmes were promised a higher income and subsequent better lifestyle by their informants. This has not always been the case in reality as noted by a smallholder farmer who refused to participate in the Dwangwa outgrower scheme: *"Those who lost their land and agreed to be out-growers now depend on us for food. They have outstanding debts, no food but lost their land"* – interview in (PLAAS, 2015, p.19).

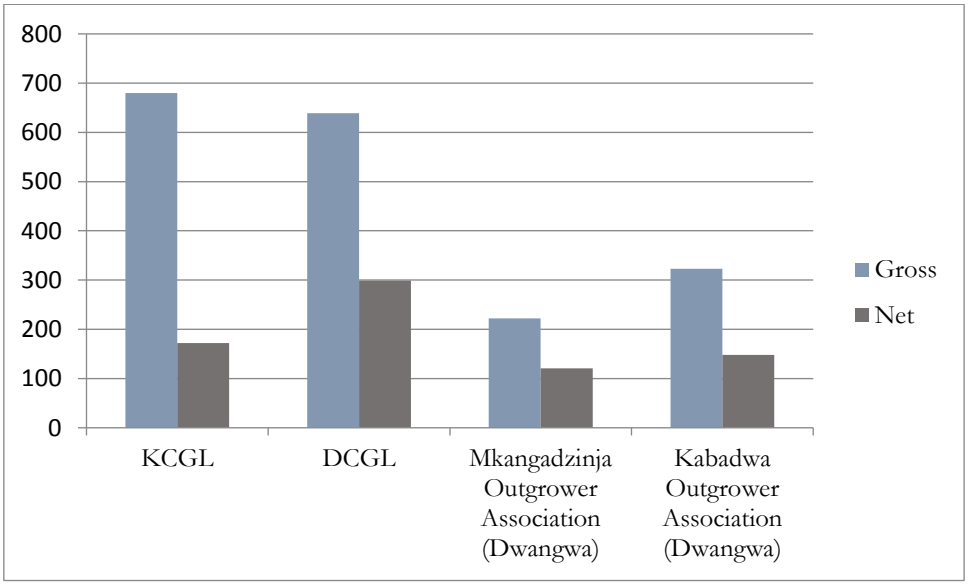
This lack of communication between Traditional Authorities and the people has also been noted by both Illovo (2014) and Landesa (2015). They note how the present national land tenure set-up and distribution of authority facilitates a uni-directional flow of information and even then, the accuracy of said information is questioned: 'the study team heard of more than one instance in which a leader claimed not to know the outcome of a dispute that had reportedly been resolved' (Landesa, 2015, p.11). Local leaders may not want to pass on unfavourable news to their community on behalf of the companies, perhaps for fear of losing respect as positions of authority. Without any experience in negotiations with companies, and with no guaranteed usufruct rights to the customary land which they farm, the smallholders have very little say into the operations of the outgrower scheme:

What they [DCGL] promise is not true because if you join sugarcane, you are completely alienated from the process of production and harvesting and you do not have powers to bargain as everything is controlled and done by the company – Towepasi Banda, local farmer and Mukhuto group member, interview in PLAAS (2015, p.19).

Certainly there is evidence that the smallholder farmers are not in a position to negotiate their best interests. Such low levels of *inclusivity* may be the reason why some groups of sugarcane outgrowers have established independent associations as alternatives to the DCGL and KCGL. Indeed, one study found that 62% of individuals who refused to participate in the Dwangwa outgrower scheme did so due to a perceived insufficient access to land (Herrmann and Grote, 2015). In total, 12 independent outgrower associations have been formed in Dwangwa (von Maltitz, 2017; Landell Mills, 2012). Sugarcane farming on these alternative associations is rain-fed

as opposed to the irrigated plantations of DCGL and KCGL. Net yields as well as yields per ha are lower than with the DCGL (Figure 7) yet, crucially, their members receive a larger share of the profits from sugarcane: 31-34% on average as opposed to 23% with DCGL (von Maltitz, 2017). This disparity is mainly because of the lower management fees and input credit payments which can be up to 50% less with the associations as opposed to with DCGL (von Maltitz, 2017).

Figure 7: Gross and Net Annual Income per Hectare for DCGL, KCGL and Two Independent Dwangwa Cane-Growing Associations (MWK 000).



Source: Landell Mills (2012)

At the OMC and Trust level, the outgrower management schemes have constitutional frameworks that are more participatory in nature: both DCGL and the DCGT require a minimum level of smallholder farmer representation on their boards (Chinsinga, 2017). Farmers from approved sugarcane grower associations are elected by association-members to represent them on the boards of both organisations. The effectiveness of this framework on the resultant *inclusivity* of the PPP is questioned. Chinsinga (2017) collates a rather one-sided body of evidence from local people, which is critical of this constitutional framework. Such criticisms state that the framework is too focused on appearing to be inclusive in nature, than actually listening to the smallholders' voices and acting upon their requests. Currently, comprehensive data is lacking as

to the true effects on *inclusivity* of the existent smallholder representation on the boards of DCGT and DCGL; further investigation is certainly required.

This overall non-transparent nature of the sugarcane outgrower schemes has seen a marked resistance against the DCGT since the first phase of expansion in 2006. The resulting, professed *inclusivity* of the expansion programmes by smallholders has not been altogether positive: average smallholder-satisfaction ratings of the DCGT and SVCGT were 26% and 45% respectively in 2012 (Concern Universal, 2012, cited in Landell Mills, 2012, p.24), and interviews with local smallholders were critical of the scheme: *"This development is very unfair, and it is only for the [Group Village Headman] and his Committee"* – Mary B (2012), interview with Bondo Group Village outgrowers, Dwangwa in Landell Mills (2012, p.18); "*committee*" refers to the development committee. A second farmer from the Kasitu scheme expressed a similar opinion, again hinting at a lack of *inclusivity* in the sugarcane outgrower scheme in Dwangwa: *"This initiative to force us to give up our land for cultivation of sugarcane is the worst thing that has happened to us. The benefit is only to the rich people and our chief and not to us poor people"* – Towepasi Banda, interviewed for the PLAAS (2015, p.19) study. Thus, it appears as though a land tenure framework which fails to give individuals rights to the customary land which they use, may be the reason that they are cut out of and underrepresented in land-based negotiations. It has been shown that in the Dwangwa and Nchalo contract-farming PPPs, this may be leading to lower levels of *inclusivity*.

Traditional Authorities are a Key Linker Group in Land-Based Negotiations

Through confirming Traditional Authorities as custodians of customary land, both Section 5 of the 1965 Land Act and the Customary Land (Development) Act enhance the TAs' importance in the sugarcane outgrower schemes. Indeed, the two-part model demonstrates how this renders Traditional Authorities as a key linker group in land-based negotiations. Such customary land tenure systems are often considered insecure as TAs may be susceptible to top-down pressure or bottom-up self-serving behaviour and often few checks are in place to prevent this. Certainly, the effect of this elevated importance of the TAs is to heighten their level of bargaining power and influence. This may be predicted to be a potential source of vulnerability within the schemes which decreases their *inclusivity*. Certainly, there is evidence from both Nchalo and Dwangwa that Traditional Authorities may have fallen victim to bribery and negotiations that are not in the best interests of the communities: bottom-up self-serving behaviours. Similarly, there is evidence in both areas of potential top-down pressure from government whereby TAs are not in a position

to negotiate but are simply used as 'puppets' to facilitate smooth land transactions for the GBI and The New Alliance. The same body of evidence also highlights many situations where neither of these are the case; TAs have acted 'responsibly' to truly represent their people throughout the outgrower schemes' negotiations and operations.

According to Malawian custom, Traditional Authorities are not elected and so it is possible that the level of accountability which they face from the people may be low (Eggen, 2011). This appears to have resulted in self-serving behaviour from some as observed by PLAAS (2015, p.19):

the Chief in Dwangwa benefited from the sugar plantation as there were many developments on his homestead. … newly built houses, new farm equipment and healthy crops … The Chief was not willing to disclose the source of his accumulation.

Again in Dwangwa, this elevated importance of the TAs was made official when the DCGT invited Chief Kanyenda to sit on their board of directors (Chinsinga, 2017). With the TA having vested interests in the operations of the Trust, it is arguably much easier to coerce them into approving land transactions in favour of expansion programmes. Chief Kanyenda and the Kazilira Development Committee were reportedly funded to campaign for the outgrower expansion programme amongst local people. Villagers who did not participate in the resulting sugarcane outgrower scheme were accused of being 'anti-development' (Chinsinga, 2017, p.511).

Again, in Dwangwa, there was one recorded incident of a non-local DCGL expansion officer receiving 5ha of sugarcane from the Traditional Authority (Landell Mills, 2012). The local villagers are aware of these possible underhand proceedings: "*We suspect that our Chief received money from elite investors and other politicians to implement this project"* – Frojala Kaunda, Chairperson of Kasitu Mukhotu Farming Group, interviewed in 2014, in PLAAS (2015, p.13). Similarly, an interview with a displaced farmer in Kasitu, Dwangwa, raises suspicions of government staff abusing the land tenure framework via the co-option of TAs:

I have been a farmer on my land for 36 years and my land was taken by the company [DCGL] with the assistance of the traditional leader. I no longer have anywhere to cultivate and the land was my livelihood. … The chief even gave some of the land from my neighbours to the politicians. A lot of politicians were given land. – interview in PLAAS (2015, p.17).

The accusation by villagers of bribery within the higher levels of organisation is rife (Chinsinga, 2017; PLAAS, 2015; Landell Mills, 2012). However, it is not only the smallholders who recognise this. A former Member of Parliament - who represented the Kazilira *dambo*, Dwangwa – brought the issue to the Government with a letter written in June 2009: *"there are 85 people who illegally got pieces of land in the Kazilira dambo, contrary to the original plan of the project which includes bank managers, businesspersons and other non-indigenous persons"* – (Member of Parliament, 2009, cited in Chinsinga, 2017, p.513). The Kazilira *dambo* is under the jurisdiction of the aforementioned Chief Kanyenda. This official letter strongly supports the findings of a Malawi-wide study by Kishindo (2004, p.218), that those who have benefitted most from the current land tenure system are 'rural-based businessmen, retired salaried workers and affluent migrants'.

As stated in the 1965 Land Act, Traditional Authorities may allocate usufruct or occupancy rights; legally they may not facilitate transactions in return for money or equivalent (Land Act, 1965, Cap 57:01, Section 26). However, there have been documented cases of TAs being taken to court after illegal transactions have occurred. In this respect, it appears as though the enforced Malawian legal framework may well protect against illegal transactions and thus allow for more-*inclusive* contract-farming PPPs. In Ngowe area, near the Nchalo estate, a Malawian business man and ex-minister in the government purchased 10,000 ha of customary land via negotiations with Chief Ngowe for sugarcane plantation (Mpaka, 2016; PLAAS, 2015). This land had been assigned as part of the GBI under the assumption that it was idle land. Traditional Authorities (Group Village Headmen) Mwanawa Njobvu and Brown Bissenti Konzere give a different perspective on this:

> *We were surprised to be notified that … the land now belonged to Mr. Khembo. This land covers more than [10,000 hectares]… We were also surprised to see that our Chief got a restraining order from court stopping us from having access to the land. We then mobilised our community members to be resilient and block every attempt at taking our land … When applying for the land, the buyer and our chief alleged that it was idle land and that they want to use it for sugarcane cultivation. But this is a lie; we do not have idle land in this place. Most of that land which they call idle is grazing land for our livestock* – (Njobvu, 2014, cited in PLAAS, 2015, pp.14-15).

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I am one the chiefs [sic] that has people whose land was sold to a businessman in this community. The deal was negotiated secretly between our chief and the businessman when they processed a lease without our consultation and had to use a fake community to give consent to the lease when the affected land is within our territory. We think our traditional chief has treated us unfairly by failing to negotiate with us and selling our land without our knowledge – (Konzere, 2014, cited in PLAAS, 2015, p.15)

The resulting court case was ruled in favour of these Group Village Headmen and the community, both in the High Court and later in the Supreme Court (Mpaka, 2016; PLAAS, 2015). This case demonstrates how Traditional Authorities may be susceptible to bribes and corruption through the high level of importance bestowed on them by the land tenure framework. This land transaction deal was facilitated under the guise of the GBI and so The New Alliance. Thus, it appears that these two initiatives may have exaggerated any negative effects of the land tenure framework on *inclusivity*. When enforced, the legal framework in place has in this case, protected the rights of customary land holders. Yet the money for lawyers and for pursuing a high-profile court case is hard to come by leaving many smallholders still vulnerable to underhand land transactions.

Evidence also suggests that Traditional Authorities are similarly exposed to a high level of top-down pressure from the Government, the OMCs and Malawian political elites to approve the sugarcane outgrower schemes. This pressure may leave chiefs with no choice; forcing them to approve land transactions that are not in the best interests of the local people. Even when local people have come together to resist land conversion to sugarcane plantation, the Traditional Authorities are obliged to support the Government and its initiatives (FAC, 2012). Of course, traditional authorities are not a homogeneous group and there have been many cases whereby individuals truly represent their people in negotiations and land transactions. Group Village Headmen Njobvu and Konzere provided examples of this. In Dwangwa, in 2009, a subordinate Traditional Authority, John Nyolosa, died in police custody whilst protesting against DCGL expansion programmes (PLAAS, 2015). However, evidence exists which suggests that Traditional Authorities are indeed vulnerable to external influences in the sugarcane outgrower schemes, in the absence of certain checks or preventative measures. Given their elevated importance according to the national land tenure framework, this vulnerability appears to be leading to lower levels of *inclusivity* in the two contract-farming PPPs studied.

Beneficiary Lists

Due to the absence of official individual rights to customary land, there is no formal database that lists the individual users of customary land. Given the theory on land tenure, this may be noted as a means through which users of customary land are susceptible to losing their rights, and also being denied appropriate compensation in land transactions. Evidence from the two sugarcane outgrower schemes appears to support this theory. In Stages 4 and 7 of the outgrower expansion programmes (Figure 5: Part II of the two-part model), Traditional Authorities compile and submit a beneficiary list to DCGL and KCGL. This is done due to the absence of a national registry and one would predict has a negative effect on the *inclusivity* of sugarcane outgrower schemes. The beneficiary lists are intended to provide a system whereby the original customary land users are compensated for relinquishing their land, and receive appropriate sub-leases from the OMC after the first sugarcane harvest (Figure 5). This system however, may be prone to corruption by elites and rent-seeking behaviour from Traditional Authorities. There have been cases whereby original land users were not included on the lists, or were included but with sub-leases not equivalent to the land they contributed to the scheme: "*I had 5ha, now I have 2.5ha … where is the rest?"*– Mr K, from Bondo Group Village outgrowers, interviewed on 27th April 2012 (Landell Mills, 2012, p.18). Landell Mills (2012) also reported a case of two brothers in Kazilira, Dwangwa who contributed 7.5ha between them, yet neither was included on the beneficiary list.

In a semi-structured interview with a smallholder farmer – smallholder farmer X - on 13th May 2010, Chinsinga (2017, p.511) documents an extreme case of potentially mishandling the beneficiary list. Smallholder farmer X was already in possession of an irrigation pump and therefore did not feel it necessary to join the sugarcane outgrower scheme with DCGT. However he was persuaded to offer 15ha of his land for the scheme on the condition that it would be returned in the form of sub-leases. During the interview, smallholder farmer X states he was only returned 5ha, and even this was fragmented across different areas. The implications for him and his family are of course drastic. This example supports one of Herrmann and Grote's (2015) observations; many people did not want to participate in the Dwangwa outgrower scheme for fear of Traditional Authorities reallocating land to others after the land had been converted.

In contrast, there is clear evidence that the names of non-locals have been put down on the list as beneficiaries. In Nchalo we have seen that the dividends of the sugarcane outgrower scheme

were potentially *"divided against a number that is not real"* (PLAAS, 2015, p.15). The aforementioned Member of Parliament documented one such case involving 85 illegal individuals in Dwangwa (Member of Parliament, 2009, cited in Chinsinga, 2017, p.513). The words of a community farmer in Dwangwa also allude to the fact that non-original users of customary land are on the beneficiary list:

How come we find Illovo employees having sugarcane plots here? Is this not a way of taking away our land? They are already working and earn money at the end of the month whereas we do not. Why do they want to get the little that is meant for us as well? Unfortunately, we do not know how they find themselves in the scheme – Towepasi Banda, interviewed for PLAAS (2015, p.13).

Thus it appears that in the absence of a formal registration system for the rights of individual customary land users (regardless of the fact that these rights are only occupancy or usufruct), the substitute beneficiary list is not a fool proof alternative; potentially prone to individual agendas, corrupt behaviour and general mishandling. Cited evidence implies that this has a negative effect on the *inclusivity* of sugarcane outgrower schemes.

The Role of Government

Aside from the MLH facilitating land transactions under the GBI and The New Alliance, Government has also been involved in the workings of outgrower schemes at the ground level when resistance from the communities has surfaced. Often this involvement has manifested itself in the form of police enforcement. Within the boundaries of the Kafuzila traditional authority, Dwangwa, DCGL and the police worked together to occupy an area of land due to growing community resistance. Such resistance may certainly be taken as evidence for communities feeling excluded from the operations and benefits of the sugarcane outgrower schemes. On multiple occasions, police-community interactions have led to violence: in 2006, 2008, and 2009 – where subordinate Traditional Authority John Nyolosa died in police custody -, and 2012 where a 21-year old community member was killed by police (PLAAS, 2015): *"In 2006, we went to fight the police that had come to assist the company people to invade our land. The police had guns and I was caught by the police and beaten"* – Emily Wadisoni, local woman from Dwangwa, interviewed for PLAAS (2015, p.17); *"In 2012, when the police came we went to fight …. We went with pangas and knives, but police had guns and one of our villagers was shot"* – Frojala Kaunda, community member interviewed on 8/7/14, (PLAAS, 2015, p.15). PLAAS (2015, p.17) presents an extract of a letter to the President of Malawi from the people of the Kazilira *dambo* which notes how the police are

instruments of the state and thus police violence in the forced takeover of land is done on behalf of the Government:

> *The police in the month of November 2008 demolished people's houses, bruised land owners … The police are government machinery and are called Police Service. Their duties include protecting the lives of people and their property. … They bruised and harassed people on their own land and used tools to grab our land, leaving us without food, houses and economic hope, because we have seen for ourselves our land being given to rich businessmen and women.*

This letter would certainly imply that the situation regarding customary land and sugarcane in the Kazilira *dambo* had turned negative within two years of the first outgrower expansion programmes.

The Malawian Land Valuation Framework

It has been noted that the Malawian land valuation process negates to include the open market value of the land (Malawi National Land Policy, 2002). Previous academic studies have often concluded that a general failure to recognise this value creates an unjust tenure system which is not accepted by the people (Chimhowu and Woodhouse, 2006). Further literature on land valuing procedures concludes that they must be open to everyone, not just the economic and political elite (Toulmin, 2009; Platteau, 1995). Critics of the 1965 Land Act outline how there is no officially-set procedure by which the MLH conducts land valuations and that this may allow for inconsistencies (Landell Mills, 2012). Given the literature, it may be presumed that the current outgrower scheme model is susceptible to weak land valuation procedures that may predict a contract-farming PPP of reduced *inclusivity*. Interviews with community members imply this may also be the case in reality. A woman from the Bondo Group Village outgrowers alludes to the fact that her compensation received for the customary land offered was certainly unjust:

> *I am from Bondo Village [Dwangwa], but when my 1 acre garden was taken for Kasitu North Scheme [- a sub-scheme of the Dwangwa sugarcane outgrower scheme-], I was compensated MK4,000 (US$23). I was surprised and refused it. I would rather continue with my crop. But, I have not been given even the sugarcane plot*– Mary B, 2012, in Landell Mills (2012, p.18)

In one well-documented case, community members of the Kazilira *dambo* decided to take action over the DCGT who had been digging canals on customary land. The digging was carried out under the authority of the Government MLH and destroyed crops, houses and other buildings:

> *Since 2007, Dwangwa Cane Growers Trust and Dwangwa Cane Growers Limited have been destroying our staple food … where we spent a lot of money and energy. All the houses have been destroyed completely* – extract of a community letter to the President of Malawi, in PLAAS (2015, p.18).

Eventually, on the 3rd of December 2007, the community took their own Government and DCGL to the High Court in Blantyre (PLAAS, 2015). This was funded by a community collection where individuals voluntarily contributed funds. The people put forward a 'cease and desist' request to the company as well as demanding compensation be paid. Due to customary land law not recognising the market value of land, the court ruling was both positive and negative for the community members. On the one hand, compensation must be paid by DCGL to the affected individuals for the loss of buildings and crops i.e. for the usufruct value of the land lost at the time of digging. On the other hand, the people had no legal grounding to demand the company stop digging. This was supported legally in two ways: firstly, the customary land is vested in the State, and the Government had approved the digging procedures, and secondly, *"the legal position is that when one is allocated customary land one has the right to use… the surface only"* and the digging occurred 2 meters below the ground (High Court in Blantyre, 2007, cited in PLAAS, 2015, p.16).

This court ruling provides a clear example of how the land tenure framework can lead to negative implications for a customary land based community: solely including the usufruct value of the land at the time has appeared to reduce the *inclusivity* of the scheme in Dwangwa. Judge Justice Tweya did not provide a quantitative sum for the compensation owed by DCGL to the community (PLAAS, 2015; Landell Mills, 2012). Perhaps this was due to the lack of formal valuation procedures in Malawian law. This High Court Ruling was in 2007, by 2014 the community were still uncompensated for the damage to their crops and buildings – not to mention there land was still significantly less productive. This caused the people to once again take the case to the (Mzuzu) High Court in 2014; the same sentence was passed. By 2015, no compensation had been paid (PLAAS, 2015).

Evidence would appear to support the literature and the opinion of the GoM (Malawi National Land Policy, 2002) that land tenure frameworks which do not include the open market value of land and lack distinct procedures by which valuation should occur, will reduce the *inclusivity* of contract-farming PPPs. This case highlights another crucial point, that legal systems which do not enforce the sentences passed weaken the implementation of the land tenure framework. The people's confidence in the justice system will have been impacted by this failure to uphold a court ruling, creating distrust in the justice system, outgrower manager companies and outgrower schemes as a whole.

6. Conclusion

This paper contributes to the literature on contract-farming public-private partnerships and how they may be affected by a country's national institutional framework for land tenure through the analysis of two sugarcane outgrower schemes in Malawi. Given this case study, it is possible to say that the land tenure framework does indeed have an effect on the level of *inclusivity* of contract-farming public-private partnerships. These sugarcane outgrower schemes employed a nucleus-estate contract-farming model that led to heightened competition for the customary land surrounding the Illovo estates.

Given this, it appears that a land tenure framework which does not individually title customary land will likely decrease the levels of *inclusivity* of contract-farming PPPs. This may happen in three main ways. Firstly, without the need for obtaining individual land users' permission for transactions on customary land, smallholder representation may be decreased. Secondly, through elevating the importance of Traditional Authorities by instating them as custodians of customary land, contract-farming PPPs become vulnerable to external factors influencing the decisions of these Authorities. This is in the absence of checks and balances protecting against such factors. Thirdly, should compensation need to be paid to a group of customary land users affected by a land transaction, the lack of an official registry may lead to misnomers (accidental or not) in the compensation and in this case, sub-lease processes. It was found that a supportive and enforced justice system may act to reduce potential negative effects of these three findings on *inclusivity*.

A further finding for the effects of the national land tenure framework on the *inclusivity* of a contract-farming PPP involves land valuation procedures. These findings support the current literature; a valuation procedure which does not include the open market value of customary land and lacks official guidelines may reduce the *inclusivity* of land transactions on customary land as well as reduce smallholder acceptance of the process. Overlying this case study have been the agricultural development initiatives the Greenbelt Initiative and The New Alliance. This paper argues that such demand-driven policies may have a strong motivation effect on the partners' actions, and exaggerate the potential reduced *inclusivity* effects of land tenure frameworks on contract-farming PPPs.

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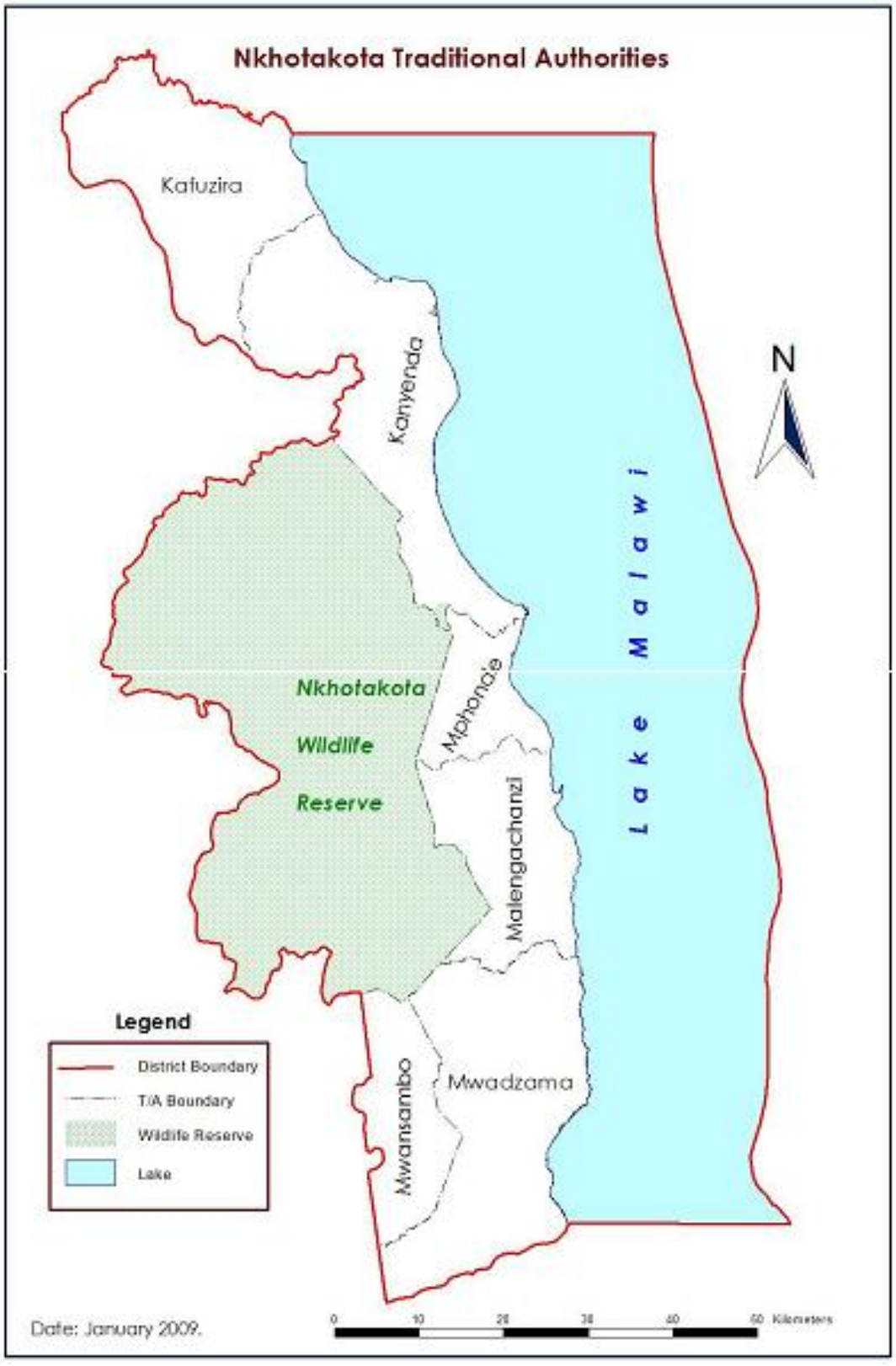
8. Appendices

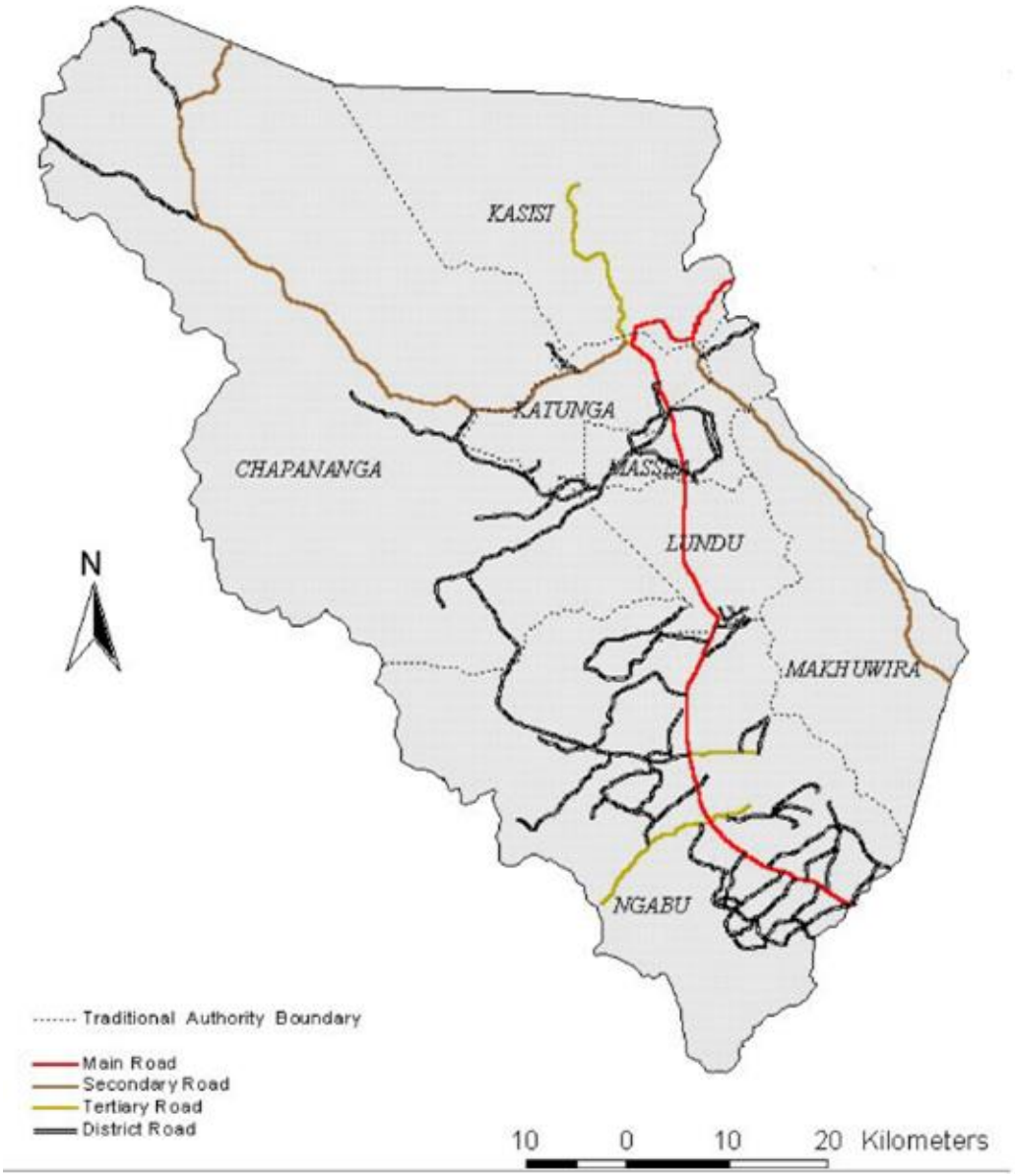
Appendix 1: Maps of Traditional Authorities' Borders

Map 1: The Traditional Authorities' Borders in Nkhotakota District. From North to South: Kafuzira, Kanyenda, Mphonde, Malengachanzi, Mwadzama, and Mwansambo.



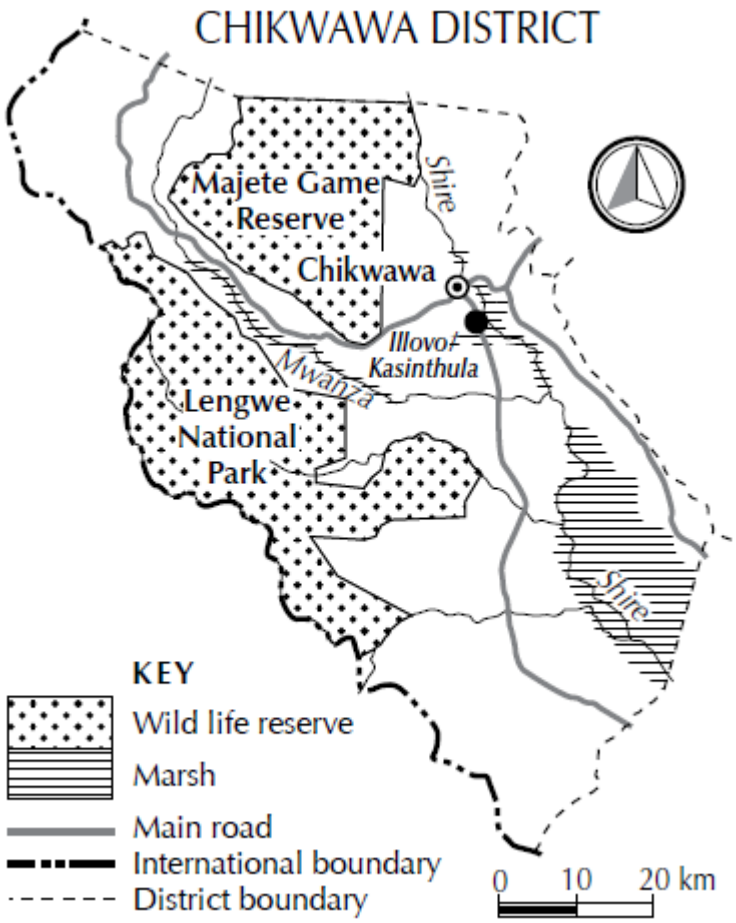
Source: Nkhotakota District Profile, in Landell Mills (2012)

Map 2: The Traditional Authorities' Boundaries in Chikwawa District. Clockwise from top: Kasisi, Katunga, Massea, Lundu, Makhuwira, Ngabu and Chapananga.

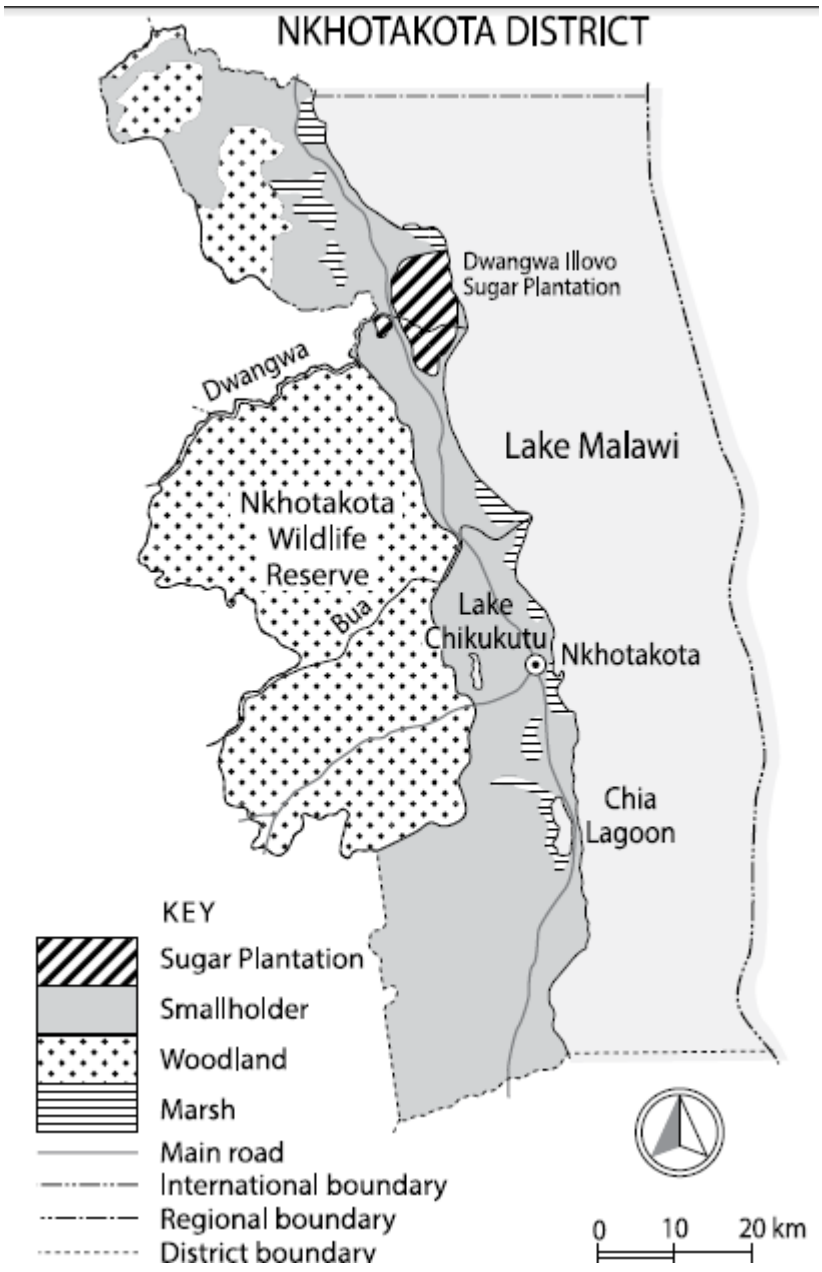


Source: University of Malawi, College of Medicine, 2008, in Landell Mills (2012, p.10).

Appendix 2: Land-use and Area Maps of Chikwawa District, Southern Region and Nkhotakota District, Central Region



Source: Chikwawa District Council Economic Profile (2013), in PLAAS (2015, p.4).



Source: Nkhotakota District Council Economic Profile (2013), in PLAAS (2015, p.3).