

***FOREST GOVERNANCE LEARNING GROUP***

***MALAWI***

**A study on livelihoods, governance and  
illegality:**

**Law enforcement, illegality and the forest  
dependent poor in Malawi**

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**Final Draft**

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## List of acronyms

ADB:	African Development Bank
ADMARC:	Agricultural Development and Marketing Corporation
ARNMC:	Area Natural Resources Management Committee
DFID:	UK Department for International Development
DFO:	District Forestry Office
ESCOM:	Electricity Supply Commission of Malawi
FD:	Forestry Department
FGLG:	Forest Governance Learning Group
FMB:	Forest Management Board
F MDF:	Forest Development and Management Fund
FPIM:	Forest Plantation Initiative in Malawi
GoM:	Government of Malawi
GVH:	Group Village Headman
HIPC:	Highly indebted poor country
VNRM:	Village Natural Resources Management Committee
HIV/AIDS:	Human immunodeficiency virus/acquired immune deficiency syndrome
IIED:	International Institute of Environment and Development
LTS:	LTS International
NGO:	Nongovernmental organization
MPRSP:	Malawi Poverty Reduction Strategy Paper
NEAP:	National Environmental Action Plan
NFP:	National Forestry Programme
NSO:	National Statistical Office
NTFPs:	Non-timber Forest Products
PAP:	Poverty Alleviation Programme
SAP:	Structural Adjustment Programme
UNDP	PROFOR: United Nations Development Programme on Forests
VDC:	Village Development Committee
VFA:	Village Forest Area

## 1.0 Introduction

The Malawi economy largely depends on agriculture. Despite many efforts to diversify the economy, the agricultural sector continues to dominate the country's economy, supporting 90% of the population and accounts for 40% of the Gross Domestic Product (Forestry Department, 2003)<sup>3</sup>. Malawi's agriculture system is characterised by a dual system consisting of the smallholder sub-sector and the estate sub-sector. The smallholder sub-sector operates on 4.8 million hectares of customary land and contributes 80% of Malawi's food basket and 10% of exports. The estate sub-sector concentrates on tobacco, tea and sugar, which account for 80% of all agricultural exports (Forestry Department, 2003). This high dependency on agriculture for exports and livelihoods has created significant pressure on forest resources, especially those on customary land. Forests play a vital role in supporting economic and agricultural growth in the country. At household level, forests play a significant role in supporting the livelihoods of many smallholder farmers by providing energy for cooking, food, medicines, fruits, shade and water. The Ministry of Natural Resources reports in the Forestry Policy<sup>4</sup> that 90% of energy requirements in Malawi are met from by wood-fuels derived from natural and planted forests and trees planted on farm or surroundings. The rural population, which makes about 85% of the total population of 9.9 million (NSO 1998), depend entirely on forests and trees for their fuel-wood, timber, poles and traditional medicine.

## 1.2 Setting the scene: the scope of the study

### 1.2.1 Study objectives

The purpose of the study is to identify the impact of current legislation and illegality in the forest sector and suggest practical ways by which the formulation, implementation and enforcement of new legislation might better serve the forest-dependent poor in Malawi. The scope of the study involved around undertaking *new* policy research on the impact on the forest-dependent poor by examining current forest governance structures/mechanisms and current legislation (including that outside forestry but which influences forestry activities, analysing the intended benefits of the legislation to support the livelihoods of the poor and identifying whether these are being implemented or not and for what reasons. The study also examined attempts, mechanisms and barriers (and their impacts on the poor) to enforce legislation by all stakeholders.

### 1.2.2 Key definitions

**Forest governance** was understood as the exercise of authority through formal and non-formal institutions for the common good of the society (Nalin Kishor, 2001 in Summary Report of the Forest Law Enforcement and Governance, East Asia Ministerial Report Conference, September 2001)<sup>5</sup>. This definition is also supported by IIED whose "working definition" of good governance refers to the decisions and actions (exercise of authority in the case of Kishor) that remove barriers and install the policy and institutional systems, which spread local forestry success. Governance is therefore understood in the broadest context, not only the actions and decisions of government but also includes those of other stakeholders as well.<sup>6</sup> Non-state actors like NGOs, civil society organisations, the church and

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<sup>3</sup> Forestry Department, 2003: Forest Law Enforcement and Governance in Malawi

<sup>4</sup> GoM, 1996: Ministry of Natural Resources, National Forestry Policy of Malawi.

<sup>5</sup> Nalin Kishor, 2001 in Summary Report of the Forest Law Enforcement and Governance, East Asia Ministerial Report Conference, September 2001 at [www.certifiedsourcetimber.co.uk](http://www.certifiedsourcetimber.co.uk)

<sup>6</sup> **IIED (2004): Forest Governance Learning Group – Malawi: DRAFT Terms of Reference, Study on livelihoods, governance and illegality:** "Law enforcement, illegality and the forest-dependent poor in Malawi"

the private sector important roles to play in promoting pro-poor forest governance as the state. The part played by these actors has also been assessed in the report. Therefore the team understood governance in the broad context of various players, policies, laws and institutions acting and interacting to serve the public good. Although the role of government is key, it is not the only one that matters, especially when issues of poverty, participation, vulnerability and illegality are to be considered. It was understood in the context that good forest governance should involve the provision of the rule of the law, control of corruption, effective implementation of policy and legislation, reduction of bureaucratic burden and promotion of accountability.

**Illegality** was defined as any violation of the agreed laws in relation to forest management, including corruption. Malawi has a dualistic legal system with traditional as well as statutory laws. From other studies and the case study done at Thuma, it has already been found out that both the traditional law, which is governed by traditional authorities, and the statutory law as governed by the state operate side by side in forest management. Illegality was hence defined as any violation of either of these laws.

**Livelihoods:** Analysis of the relationships between forests and economic opportunity fits well with the concept of **sustainable livelihoods** that a number of development agencies are adopting. The UK Department for International Development (DFID) defines “livelihood” as comprising “the capabilities, assets and activities required for a means of living. Care International defines livelihoods as the way people access resources, what gets in the way of access, how resources are used to build assets and crucially how assets reduce people’s vulnerability to poverty and disasters. In the study, the team used the DFID and CARE framework to assess presence or absence of any policy or legislative elements in the forestry sector that facilitate or constrain how poor people access forestry goods and services, the response by poor people (illegal or illegal activities) and eventually what impacts do these policy elements have on people’s livelihoods. In the case study, it was clear that forests and trees play key livelihood roles (through both legal and illegal activities), like the provision on income, food, assets and other services that directly support survival of the poor. A large number of households around Thuma Forest reserve completely depend on illegal charcoal burning for their basic survival, making enforcement a big challenge for the Government.

## **2.0 Methodology**

In terms of methodology, the study applied a number of research approaches, starting with a review of a number of policy and legal instruments to understand the big picture and isolate main issues for investigation. The main output of the literature review was a progress report that was presented to the FGLG feedback and guidance meeting, LTS and IIED. Comments received on the progress report guided the team in further consultations and drafting the final report. Individual consultations were done with policy makers, FGLG members and local charcoal producers community members, users and transporters. FGLG members outside Lilongwe were contacted by email, although only one responded. Field level consultations were done at two case study sites at: Chinkhowe Village along the Thuma Forest Reserve and at Group Village Headman Mankhamba, along the Lilongwe Salima road. To get a broader understanding of the

issues, two research assistants<sup>7</sup> did similar interviews in Michiru in Blantyre and in Nkhoma area in Lilongwe. Their inputs were included in the report.

### **3.0 Summary of current situation of forestry, livelihoods and illegality in Malawi**

#### **3.1 Principal livelihood benefits derived by forest-dependent poor in Malawi,**

The importance of forests and trees in Malawi cannot be overemphasized. They are an important natural resource as they provide basic human needs (fuel-wood, food, fodder, fibre and pharmaceuticals), employment, income and foreign exchange for the country. Forests also help to stabilize the natural environment and contribute to the richness of our national biodiversity. In addition there are rich forest-based cultural and ecological sites in Malawi, which form important tourist centres for the country. Forests and trees meet Malawi's requirements for fuelwood, poles and timber. A total of about 10 million m<sup>3</sup> of fuelwood is met from the country's forests; this is about 90% of the nation's energy requirements. Being an agro-based economy, forests have two livelihood benefits in the economy: direct and indirect benefits.

##### *3.1.1 Direct benefits*

Direct benefits are those benefits that meet basic needs of the poor. Malawi's woodlands and forests provide these benefits in form of sources of energy (cooking, heating and warming), food, construction materials for households, medicines and shelter. The nature of direct benefits is that they are tangible, obvious, basic, short-term and therefore do not "need any explanation" to value them. The majority of the poor in Malawi are also desperate and vulnerable, hence there is a tendency for them to appreciate direct benefits from forests more than indirect ones which are environmental in nature. This attitude is a major influencing factor for illegality. According to views from the community, which are also supported by Tony Seymour (2001)<sup>8</sup>, both indigenous as well as exotic forests provide a wide range of useful (direct) products.

##### *3.1.2 Forestry income*

Although no empirical data is readily available in country about the contribution of forest income to household livelihoods in rural areas, it can safely be concluded that it is very significant. From the case study it has been found out (Table 2) that charcoal burning is a very lucrative business, benefiting almost everybody in the production chain. The annual income flowing into Chinkhokwe village was estimated to be MK2,340,000.00 which is equivalent to USD23400.00. for the urban dweller the income saved from buying electricity is so attractive that there is no incentive for middle income households to connect to electricity. It was estimated from the case study that illegal charcoal subsidises urban households by at least MK4000 (USD40) a month, which is the average salary for a graduate civil servant.

#### Box 1: Learning from others

A survey of 82 villages in India found that the poor obtain 66–84 percent of their fodder from common property resources such as forests. These resources provided 14–23 percent of the income of the poor and 137–196 days of employment per poor household (Jodha 1986 in *J. Bojő, et.al 2000*)<sup>1</sup>.

<sup>7</sup> Ms M. Kunje, BSc Forestry Student Mzuzu University for Blantyre interviews and Mr Chizunkila, retired Principal Forestry Officer for Lilongwe interviews.

<sup>8</sup> Malawi Government, 2001: A Guide to community based forest management by Tony Seymour, 2<sup>nd</sup> Draft

### **3.1.3 Source of energy**

Biomass fuel accounts for 93% of Malawi's energy consumption, of this almost two thirds is derived from trees. Among the poor, both in the urban and rural sector, alternatives to wood fuel are not readily available. The hydroelectricity provided by ESCOM is either too expensive for the poor to afford or coverage is poor. As if this is not enough, ESCOM's requirements for connection are expensive, bureaucratic and not conducive to the rural and urban poor. Although there have been attempts to diversify energy sources to paraffin, gel fuel, biogas, solar power, these efforts have not yielded gains due to cultural, social and economic reasons, most of them beyond poor people's control. In addition, due to a poor and harsh macro-economic environment marred by corruption, high lending rates (of up 35%), red tape and bureaucracy, the private sector has not been active in supporting the government in implementing energy diversification policies. All the factors lead to increases in illegal charcoal and firewood production, which are felled to the market without Government benefitting.

### **3.1.4 Construction materials**

Forests provide construction materials, including poles for building houses and tobacco barns; timber for building, joinery and wood-carving, and bamboos, bark, vines and palm leaves for a variety of construction and craft industries. The craft industry is a significant income generating activity and a big source of illegal wood transactions. But most craft industry owners cannot be classified as poor, although they source wood from customary land and forest reserves on which the poor depend. With the rise in rural-urban migration there has been a significant increase in informal wood industry in urban areas, which use poles and wood from customary, private or public land.

### **3.1.5 Wild foods, including fungi, fruits, insects and game animals**

Forests provide a range of foods and foodstuffs that many people depend on. Fruits, ants "ngumbi", and mushrooms are possibly the most important foodstuffs people obtain from forests. Although these foods are important year round or by the season of availability, they particularly become crucial during the months of January and February, when there are widespread food shortages in the country (the NTFPs can be extracted and sold for income). During the 1992 and 2002 drought years, forest products served a number of lives by providing even a broader range of foods, which included roots and tubers that are not normally eaten during normal harvest years. Hence forests have been a natural safe-net for the poor. With the increase in HIV/AIDS (seroprevalence<sup>9</sup> of 14.4%, National AIDS Commission, 2003), herbs obtained from forests have been crucial in treating HIV/AIDS related opportunistic illnesses. Since the majority of the population relies on traditional sources of medical services, the importance of forest "hospitals" should not be under-estimated in Malawi.

## **3.2 Indirect benefits**

Forests play a wide range of indirect but very important roles to sustain livelihoods of the poor. The indirect benefits are those related to environmental management, protection and conservation of biological diversity. Forests protect, through various ecological and environment functions, land, water and soil on which all agricultural activities take place in the country. Although these are important environmental roles and relate to direct roles, many poor people do not appreciate their value. Because they are less appreciated, conserving them usually means to many that the land is idle, common property and therefore subject to illegal exploitation and mismanagement. Example of indirect benefits are protection of soil cover that guarantees food security, water

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<sup>9</sup> Percentage of population infected with HIV



supply protection, conservation of biodiversity for tourism development and aesthetic and cultural benefits.

### *3.3 Summary typology of illegal activities that are commonly known*

Forestry can contribute to the eradication of poverty and sustainability, but only with good forest governance. Illegal forest activities have been defined in this report as any activity that is contrary to the statute laws of the country or to traditional norms and values applicable to forests in a particular community. According to discussions with the community and records from the Forestry Department the most regularly confiscated forest produce (illegal produce) include timber, charcoal and fuelwood. These are confiscated together with the equipment and motor vehicles involved in cutting down of trees or felling of forest produce. Illegal activities are done by both those who are meant to enforce the law and the community in general. Hence the study found that there are two broad categories of illegal activities i.e. those committed by the law enforcement agents and those by community or users of forests.

#### **3.3.1 Demand (users) side**

There are many reported types of illegal activities that are committed by users as reported by the community in both Chinkhokwe and Mankhamba villages. However, the discussion only focussed on two keys issues which are reportedly more important to the community, as reported by themselves.

- Charcoal burning is among three major worrying illegal activity that attracts public attention. It is discussed comprehensively in later sections of the report.
- Illegal timber harvesting including theft of poles and timber from forest reserves, pole-wood and timber plantations is common in all plantations especially those close to urban areas, where the market is readily available. It is done by both small scale and large-scale entrepreneurs, sometimes with collusion with FD staff members. Encroachment of protected areas is a common problem in areas, like in Thyolo and Zomba, where land is a problem.
- There are also reported cases of fraud and corruption in the forestry sector. Although corrupt practices are difficult to detect, it is alleged that entrepreneurs corrupt staff and communities to get wood from protected areas and customary lands respectively.
- Forest fires, unauthorised forest fires have caused significant damage to industrial plantations.
- Illegal exports and imports between Malawi, Zambia and Mozambique are also being reported. Many charcoal vendors claim to buy charcoal from Mozambique. It is also reported that a lot indigenous wood is imported illegally from Mozambique, with corresponding exports of pinewood to Mozambique from Malawi.

#### **3.3.1 Supply (service providers) side**

- There reported cases of corruption between staff, communities, traditional leaders and entrepreneurs.
- Illegal agreements between forestry staff , the private sector and members of the community, where the latter obtain wood for services rendered to staff or to the Department.

- Theft of wood, forged revenue receipts, under and non-reporting of crime or revenue, illegal provision of forestry employment to conceal illegality and non-provision of licenses.
- Evicting communities to establish forest reserves without paying any compensation.

Illegal activities on forestlands may arise from a variety of circumstances, as defined in a particular legislation, and may relate to the category of land, type of trees, terrain being logged or the manner in which the logging is being carried out. It is also important to point out that what is legal logging may not necessarily be sustainable and what is illegal logging may not be unsustainable. Many of the activities are carried out either in violation of applicable legislation or the provisions of a concession agreement<sup>10</sup>. In some cases, the law may be so unclear that illegal loggers take advantage of such lack of clarity. The best example is customary forestlands. In terms of customary law, local communities are allowed to harvest forest products for their domestic use. In contrast, once customary land has been allocated to a particular individual, the holder may exploit the resources the way they deem fit<sup>11</sup>. Besides, traditional leaders who are given custody or administrative powers over customary land either by statute or customary law may feel that they own the land, and hence they can also deal with it as they deem fit, including allocating to loggers that do not belong to the community.

#### **4.0 Outline of forest governance institutions and mechanisms, policy and legislation**

##### *4.1 Forestry Institutions*

###### **a. Department of Forestry**

The office of the Director of Forestry is created under Part II section 4 of the Forestry Act. The main function of the office is to administer the Forestry Act and be custodian of the Forestry Policy. In terms of promoting pro-poor forestry, the FD is legally mandated to promote participatory forestry, facilitate community participation through formation and capacity building of VNRMCS and promoting empowerment of communities (section 4 ss d, e and k of the Forestry Act). The FD is the custodian of the Forestry Policy and represents central Government in the conduct of forestry activities. It is therefore the lead player in promotion of good forest governance and any developments therein have significant influences on the performance or under-performance of the sector, including how it contributes to poor peoples livelihoods. Although the FD has implemented a number of programmes it still faces many challenges, including but not limited to strategic direction, inadequate resources, inadequate capacity to mobilise other stakeholders, limited staff and political influences in law enforcement. As a result implementation of privatisation of its 73000 ha of timber plantations has been slow

###### **b. The Forest Management Board (FMB)**

The Forest Act Part III section 15 created a new legislative institution called the Forest Management Board. The overall objective of the Board is to advise the Minister on all matters

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<sup>10</sup> As is the case in the Malawi Constitution which provides in section 13 (d) that government shall promote and implement policies and legislation to prevent degradation of the environment provide a healthy living and working environment for the people of Malawi and accord recognition to rights of future generation by means of environment protection and sustainable development of natural resources.

<sup>11</sup> This problem was raised by the VNRMCS in Mwanza East/Neno area: See GZ Banda (2004) "Community Empowerment of Natural Resources in Mwanza East" (Wildlife Environmental Society of Malawi), Blantyre

relating to tree and forest management in Malawi. The membership of the Board is mainly senior government officers from natural resource based departments, the general public and the Timber Association of Malawi. The NGO and the civil society sectors are not particularly mentioned as members although they are a key player. FMB members are appointed by the Minister responsible for Forestry, the same person they are supposed to advise.

Despite the good intentions, practically the board has not achieved much due to many factors that include the following:

- It is government-heavy, hence cannot adequately represent or advise the Minister on matters regarding the rural poor. The poor themselves are not represented.
- Lacks independence as the Board is actually appointed by the same person, who they have to advise. The power to fire Board members is also vested in the Minister, therefore it is structurally difficult for them to advise the Minister on sensitive but important issues which may easily be interpreted as dissent.
- The Board is hosted by the FD, therefore it entirely dependent on finance, technical and administrative capacity of the FD. Often the FD cannot convene Board meetings due to financial and capacity problems, which are on the increase.
- Although the terms of reference of the Board are initially set in the Act, they have been difficult to interpret and implement, as a mechanism for doing so was not spelt out in the Law. The roles of the Board and the FD are difficult to demarcate.

However, if constituted and managed properly, the Forest Management Board has a potential to promote good governance in the forestry sector, especially in dealing with political influences on law enforcement.

#### *4.2 Forestry related mechanisms*

##### **a. Licensing as mechanism to promote legality**

Licensing is embedded in the policy and legislations as a mechanism to distinguish between legal and illegal activities. The objective of licensing is to balance the immediate need for forest products and forest-based livelihoods with the need to ensure their continued availability to future generations through controlled access by:

- allowing rural communities free access to the forest products required for domestic use and consumption;
- allowing controlled access to forest products for commercial purposes, on a sustainable yield basis, and
- prohibiting the commercial use of forest products beyond the limits of sustainability.

[This is the mechanism for implementing - good] In order to implement the above Government uses a licensing system that distinguishes between activities that do not need licence and those that need licence. The following activities do not need a licence, the harvesting or collection of forest products for private domestic use, including firewood, poles, wild foods, grass and medicinal plants, may be undertaken without licence by any individual on land which he or she is entitled to use. Protected tree species, as listed in the first schedule of the Forest Rules, 2001, may not however be taken even for domestic use except under licence. However the following activities need a licence:

- Cutting, removing or felling any tree (other than planted trees);
- Taking any other forest produce;
- Keeping bees, or collecting honey or beeswax;
- The use of wood derived from customary land for making charcoal;
- The use of wood or other forest products derived from customary land for tobacco curing, brick and tile making, wood carving, making lime, or making bamboo baskets or chairs;

- Charcoal burning
- Trading in wood or forest products.

Licences are printed centrally and in most cases due to funding problems they are not available at forest stations, a factor that encourages illegal forestry activities. Under the decentralisation programme, the responsibility for licensing these activities will in the future pass from the Department of Forestry to the District Assemblies.

**b. *The Forest Management and Development Fund***

Another new and innovative mechanism to promote forest sector financing in Malawi is the Forest Development and Management Fund (FDMF), established under the Forestry Act Part IX section 55. The intended benefits for the fund were: to promote community participation by allowing communities access finances to enable them effectively participate in conservation, augmentation and management of forest resources and forestlands in Malawi, to reduce dependency among the poor on government through empowerment, to support community participation in income generating activities hence reduce poverty. Strategically the fund was also intended to be a basket fund to finance improved forestry in Malawi. The FDMF has not achieved these benefits due to its inherent weakness that the needed to be resolved first:

- There are disparities in accounting procedures between those of potential contributors and those of government, which the fund uses.
- The fund has given too many powers to the Minister without any other stakeholders control over it-for example section 56 says that the fund shall be vested in the Minister and subject to the Act, it shall be administered in accordance with his directions. This provision restricts the participation of NGO, donors and many well-wishers to participate in the fund.
- The fund transparency and accountability arrangements are not clear, and just like the Forest Management Board, it does exclude civil society.

**c. *Co-management of forest reserves***

Co-management is the only legal mechanism for enabling communities to participate in forest reserves. Under co-management arrangements, the community enters into an agreement with the Forestry Department to be involved in managing a forestry reserve. The intended benefits of co-management are that:

- Communities can access forest reserves which have hitherto be no go areas for them
- Legitimises the modulus operandi to promote communities access to the forest reserve while promoting sustainable forest management.
- Allocates clear roles and responsibilities between FD and communities
- It also sets up the costs and benefits sharing arrangement, which has been a major cause of illegal activities

Reports from FD indicate the where co-management has been implemented (Chimaliro, Nkhatabay and Machinga) not all the above benefits have been achieved and illegal activities still continued because of the following key issues:

- The management objectives for forest reserves were set by central government, and hence even with co-management, communities are still excluded in harvesting of key products like wood, timber, poles and charcoal.
- the staff of the Department do not understand the co-management approach.
- More obligations are handed over to the community without adequate support from the FD.
- The role of NGOS, District Assemblies and more influential organisations has virtually been absent.

- The approach is not practical where many communities often surround large stretches of forest reserves. Co-management also assumes that the resource only benefits those communities, which surround it- yet forest reserves play significant downstream economic (source of irrigation) and environmental roles that stretch beyond the forest reserve itself.

In view of the above there is therefore little or no incentive on the part of local people to conserve these resources. Consequently, local communities in some areas contest the ownership of the forest reserves by the state. And similarly the Forestry Department is not actively promoting such arrangements (as evidenced by the small number of agreements signed or in pipeline). The manifestation of this contest is usually a prevalence of illegal activities, such as forest fires, poaching, encroachment, illegal logging and harvesting of non-timber forest products. For example, cases of illegal harvesting of medicinal plants, fruits, grass, caterpillars, and other non-timber forest products have been reported in all forest reserves<sup>12</sup>.

#### *d. Private sector governance*

The private sector owns a minority of timber, pole and fuel-wood forest plantations. The Forestry Department indicates that there are 118,000 hectares of plantations (fuel-wood, poles and timber) of which 98,000 ha is owned by the Government and 20,000 ha belongs to the private sector. In view of the dominant role by government in ownership of potentially commercial entities, the inclusion of the private sector partners in management of the resources is a primary objective of the Forestry Policy and the national forestry programme. Through the Forest Privatisation Initiative in Malawi (FPIM), government has decided to handover management of timber plantations to the private sector through concessions to improve their management and potential contribution to the economy.

There are governance and legal issues related to private sector participation in forest management. Forests on private land may either be under leasehold or freehold tenure, both of which are ultimately held by the state as the main landlord. In leasehold, the lessee has a much more secure tenure than the person holding a concession. The latter is a mere licensee, or a contractee, and hence has less proprietary elements. This is because during the life of a lease, the landlord has fewer controls than the licensee or concessionaire. Therefore the lessee is more likely to invest in social and livelihood issues for the surrounding community than the concessionaire. The former is also more likely to comply with the provisions of the agreement than the latter.

Under freehold tenure, there are no terms and conditions on the title, save for the general forestry and land-related legislation. Such legislation mainly stipulates issues of sustainable forestry management. Freehold property, as the name suggests is 'free' of any conditions related to title. The state, however, remains responsible for the supervision of the use and management of such land. This type of tenure is the least regulated category of land in Malawi because freehold has been erroneously interpreted to mean free from any government interference<sup>13</sup>. It is, therefore, not surprising that in some cases, freeholders have harvested timber from their land unsustainably. It must be noted, however, that in most cases freehold landholders are better motivated and, in general, have more resources to enable them take care of their land than customary landholders because the former have a strong sense of ownership.

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<sup>12</sup> Section 46 of the Forestry Act prohibits utilization of forest produce from a forest reserve without a licence from the DOF. This prohibition also covers forest produce for domestic consumption; and it is only forest produce on customary that can be harvested for domestic consumption: see section 50 of the Forestry Act.

<sup>13</sup> The Presidential Commission on Land Reforms pointed out this anomaly in its report: See Malawi Government [1299] *Final Report of the Presidential Commission on Land Policy Reform*, Vol. 1 (Lilongwe, Department of Lands).

**e. Governance and management of customary forests**

Customary land tenure is managed and used in accordance with customary norms<sup>14</sup> that were developed prior to the imposition of the colonial legal system. Being the dominant legal norm during the colonial era, the Common law subsumed and subjugated customary usages and norms, which in a number of cases were made inapplicable unless they were “*not repugnant to justice and morality*”<sup>15</sup>. The Common law was, however, not used as an effective legal regime in the rural areas where customary norms continued to be applied. In between the two often-conflicting norms, considerable space was open within which there were no regulatory frameworks. Much of customary land, therefore, became vulnerable to illegal logging, especially by timber and tobacco farming companies.

In view of the “open access” or ineffective regulatory frameworks, the most visible deforestation in Malawi has occurred on customary land. The unwritten nature of customary laws has made it uncertain and subject to diverse interpretations and, in some cases, its efficacy depends on the respect accorded to the relevant traditional authority who is invariably its custodian and chief enforcer. Unfortunately, as has been noted by several commentators, the power of traditional chiefs have been so much denuded and bruised that almost all of them have had their powers curtailed, and respect reduced<sup>16</sup>. Consequently, some of the chiefs rarely influence their subjects, save for political purposes. The influence or power that these traditional leaders are able to exert over the management of forests has also been adversely affected by forced relocations during designation of protected forest areas or wildlife reserves, resulting in their exercising jurisdictions over populations that have had no historical allegiance to them. This perhaps explains why national legislation such as the Forest Act does not include traditional leaders. Nevertheless customary law continues to apply under section 200 of the Constitution and the Land Act, 1965.

A key governance issue of customary forest management is the fact that local communities do not have ownership rights, only access and usufruct rights<sup>17</sup>. In the majority of cases, local communities might not even have the rights and powers to exclude users from outside their areas. Where exclusion rights exist, they are usually exercised through traditional leaders, but the overall forest management responsibility, however, still resides with central government<sup>18</sup>. In many areas that have charcoal burning problems, the highest number of burners and middlemen who transport charcoal between the source and the market, do not originate from the surrounding

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<sup>14</sup> Section 2 of the Land Act, 1965 defines customary land as land which is held, occupied or used under customary law. It also defines customary law as customary law applicable in the area. There is therefore potential of conflict between customary law that is area specific and the Forestry Act which is a national law. While the conflict may not manifest itself in patent violations so called illegal activities under forestry legislation may be resistance from customary practices.

<sup>15</sup> This clause was repeated almost verbatim in a number of statutes introducing the common law in all British colonies. In Malawi, the relevant provision was the British Order in Council, 1902. Current formulations of this principle state that customary law shall apply to the extent that it shall not conflict with the Constitution or other statutory provisions {Article 140 (1) of the Namibian Constitution: quoted in B Jones and A Corbert, ‘The legal aspects of CBNRM in Namibia’ in *Commons Southern Africa*, Vol. 3, Part 1, April 2001, p.6; see also section 200 of the Malawi Constitution.

<sup>16</sup> See GZ Banda (1999) *Land Use and Management Study* (Environmental Affairs Department, Lilongwe).

<sup>17</sup> Section 34 of the Forestry Act already alluded to is of course an exception in that it gives “any person or community” which protects a tree or forest which it is entitled to use shall acquire and retain the ownership of the tree and forest. How this provision relates to customary land or the Land Act, 1965 is not clear. Customary law and the Land Act do not give any person rights of ownership (title) over customary land, only usufruct rights. The National Land Policy 2002 seeks to encourage registration of customary land into private customary estates that may give title to these lands. Legislating this policy may promote the ownership rights granted under section 34.

<sup>18</sup> Section 9(3) of the Forest Act gives power to a VNRMC to seize and detain any forest produce which the VNRMC reasonably suspects was obtained from a VFA. However most VFAs are under the jurisdiction of village headmen, and this power therefore has to be exercised through them.

community. Where traditional leadership and practices are strong, cultural practices may be in conflict with the national forest laws. In contrast, where the traditional and central government institutions are weak, forest areas in communal areas tend to become open access areas, a situation that leads to a range of illegal activities, especially poaching, illicit logging and conversion of land to other uses<sup>19</sup>.

## **5.0 Forest governance and legislation in Malawi, intended benefits for the poor**

Before a critical analysis of the forestry policy and legislation and their intended benefits to the poor, it is important to understand the “big picture” of the poverty policy environment in Malawi. Therefore, this section briefly introduces major policies that have large influences on the forestry sector, before moving on to discuss the forestry-specific policy and legislation.

### *5.1 The poverty policy framework-the Malawi Poverty Reduction Strategy Paper*

The Government has developed a coherent and participatory framework, the Malawi Poverty Reduction Strategy Paper (MPRSP) as the main framework for poverty reduction in Malawi. The goal of the MPRSP is to achieve sustainable poverty reduction through empowerment of the poor themselves. It is built around 4 main pillars of sustainable pro-poor growth, human capital development, improvement of the lives of the most vulnerable and good governance (MPRSP, 2002). The MPRSP was formulated after the national forestry programme, hence the forestry sector was identified as one major poverty reduction area, as evidence by the reflection of the NFP priorities in the NFP. However, at implementation level, the forestry sector has not benefited adequately from resources identified for MPRSP implementation (especially the HIPC resources-highly indebted poor country), which were identified as part of financing for the MPRSP. This scenario has arisen due to problems of coordination and follow-up between the Department of Forestry and the Treasury and has resulted into the sector not effectively implementing pro-poor programmes.

### *5.2 The National Land Policy*

The Malawi Government has approved the new Malawi National Land Policy. The overall goal of the Land Policy is to ensure land tenure security and ensure equitable access to land and land based resources. The policy makes a number of recommendations that have direct impacts and benefits for the poor as follows:

- Unallocated customary land that is of a common access nature, for instance *dambos*, community woodlots and forest areas will be classified as Public Land for the exclusive use of members of the respective Traditional Authority, under whose jurisdiction that land falls. Such lands have been of common access and the new land policy removes that weakness.
- In terms of allocation, the land policy introduces transparent and participatory mechanisms for land allocation therefore, haphazard allocation, which often negatively affect forestlands will be minimised.
- All customary landholders will be encouraged to register their holdings as private customary estates with land tenure rights that preserve the advantages of customary ownership but also ensure security of tenure. This development supports good governance in forestry as it convenes ownership of land and its forest resources to particular households, implying an end to common access, which has been the root cause for deforestation in communal lands.

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<sup>19</sup> A common phenomena may be allocation of customary land to persons seeking settlement but whose real motive is to clear the land for charcoal production: Se GZ Banda (2004) “Community Empowerment for Sustainable Management of Natural Resources” (Wildlife & Environmental Society of Malawi, Blantyre).

- All land will be acquired in a transparent and participatory manner. It will be duly compensated for to the landholder in consistence with the land market supply and demand in that area.

### 5.3 *The Environmental Policy*

The Government, through a comprehensive participatory process involving the private sector, non-governmental organisations (NGOs), local communities and government' institutions prepared a National Environment Action Plan (NEAP) which was formerly launched in December, 1994. The National Environmental Plan describes the environment situation existing in the country and outlines the environment strategies, measures and programmes necessary for promoting the conservation, management and sustainable utilisation of our natural resources. In pursuance of the National Environment Action Plan and to provide a coherent Environmental framework for its development policies, the government decided to prepare a National Environmental Policy.

### 5.4 *Decentralisation Policy*

The Decentralisation Policy was approved by Government in 1996 following a review of decentralisation related activities in the country. The purpose of the policy is to decentralise political and administrative authority to the district level as a mechanism for 1) consolidating democracy and 2) for realising the country's development goal of poverty reduction. In terms of forestry decentralisation has major potential benefits to support forestry governance.

- There is potential for forestry issues to be integrated into the overall district development planning system, thereby putting NFP priorities within the overall development and poverty reduction agenda.
- Forestry activities are actually now benefiting from financing that has hitherto not been supporting forestry.
- Multi-stakeholder forums like the district executive committees, district assemblies and others that involve a number of players can now discuss forestry in the context of district development.
- Local community participation through area, village and other committees encourage communities to priorities their own needs, hence ensure that forestry activities that are implemented directly meet the poverty needs of the community.

To support implementation of the Decentralisation Policy and promote collaboration, good governance and oversight planning and management, the FD facilitated the formation of multi-stakeholder groups at various levels. These include the NFP forum at policy level and the local forest management boards around major plantations and forest reserves at district level and over 400 VNRMCs at community level.

The main issues that need to be clarified relate to the capacity of District Assemblies to prioritise development activities without sidelining forestry, whose majority of benefits are long-term in nature. There is potential that Assemblies may exploit forest resources to generate short-term revenue to finance other social economic activities. The Government supported by NGOs and international partners are implementing capacity building programmes through training, recruitment and retraining of staff, especially at district and community level to address the above constraints.

### 5.5 *The Forestry Policy and Legislation*

Despite major internal changes that took place in the country in the early 90s, such as the change of

#### Food insecurity as a cause for

#### illegality

In the case study in Thuma, a community meeting indicated that it is difficult to enforce the law as 1) people think it is their birthright to do business and reduce their own



government from single party to multiparty, the major influence on the shift in natural resources policy from top-down to participatory management originated from international processes that culminated with the Rio Summit on Sustainable Development in 1992. The policy shift had both positive and negative impacts on resources. For example Seymour (2001) reports that many people interpreted democracy to mean that they no longer had to respect the law, particularly where it applied to natural resources. At the same time the government relaxed its attitude to law enforcement and associated strict policing and law enforcement with the dictatorship. And for the first few years after the 1994 elections the state did little to interrupt the rapid growth of the illegal fuel-wood and charcoal industry. The situation was (has been since then been) aggravated at that time by governments' emphasis on poverty alleviation (with sometimes wrong poverty reduction approaches), regular food shortages due to droughts and floods and a lack of advocacy from nongovernmental organisations, which were only just beginning to blossom in the country. The community's arguments in the box above seem to agree with the National Forestry Policy goal uplifting of the quality of life in the country by conserving resources for the benefit of the nation.

The Forestry Policy, the Forestry Act and the NFP provide the framework for pro-poor forest governance in the sector. According to Seymour, the National Forest Policy sets out to make many improvements over the previous policy and aims to solve two fundamental problems:

- (1) The apparent failure of the previous policing style of forest management to protect the indigenous forests or encourage afforestation. The top-down "command and control" approach to management appeared increasingly inappropriate in the context of Malawi's new democracy and the general trend towards self-determination.
- (2) The public perception of naturally growing indigenous trees and forests as ownerless, or belonging to no one. The open access to forest resources created by this perception was seen to be a strong disincentive to responsible forest management and utilization.

Following the above, the policy has adopted principles or elements that, if implemented, would facilitate good governance and pro-poor forestry are:

- *Aims to contribute to poverty reduction:* The policy aims to contribute to poverty reduction, which is the over-arching development objective of the country. For the first time in Malawi, the forestry policy puts people first before trees.
- *Holistic and comprehensive participatory approach:* The policy presents an ambitious policy agenda, shifting from heavy handedness centralised type of forest management to participatory forest management with increased provision for poor people's participation.
- *New challenges, new institutions and mechanisms:* the policy establishes new institutions of forest governance (see section 5.5) with various mandates to implement its new vision.
- *New sources of forest finance:* the policy and the Act establish new and strengthen existing financing mechanisms to support implementation of new challenges. The new mechanisms include the Forest Management and Development Fund (FMDF) for community forestry, revenue from private sector participation etc while the old mechanisms include treasury funds and revenue collection.
- *Recognises and promotion of non-state actors:* the policy promotes civil society and non-state actors' participation in forest management.
- *Innovative and progressive mechanisms for community participation:* the policy establishes new mechanisms and tactics of community participation in forest management like co-management at local level, various multi-stakeholder forums at national and sub-national level.
- *Promote cross-sectoral linkages:* Attempts have been made to mainstream cross cutting issues like gender and the environment, although the policy instruments lack strategies on

HIV/AIDS, which is now a critical governance issue that has negatively affected the forestry sector.

- *Community-based enforcement mechanisms*: the policy allows communities, through their VNRMCs to enforce the law, thereby empowering them to manage resources according to the traditional law of the area. Section 5.5 below looks at governance and decision-making mechanisms put in place to steer implementation of the forestry policy.

Table 1: Policies, how they relate to forestry and summary intended benefits for the poor

Policy Framework	Intended benefits for the poor	Implementation limitations
<i>The Malawi Poverty Reduction Strategy Paper (2002)</i>	<ul style="list-style-type: none"> <li>• Achieve sustainable pro-poor growth</li> <li>• Provide human capital development</li> <li>• Improvement of the lives of the most vulnerable and good governance</li> <li>• Decentralised access to social services</li> </ul>	<ul style="list-style-type: none"> <li>• Inadequate resources among services providers to implement priorities</li> <li>• NFP priorities has not benefited from resources targeted to implement the MPRSP</li> </ul>
<i>The National Land Policy (2002)</i>	<ul style="list-style-type: none"> <li>• Land tribunals to settle land and forest related disputes</li> <li>• To improve coordination between land committees and with VNRMC and ARNMC</li> <li>• Introduces compensation in cases of forest acquisition by any player</li> <li>• Introduces land markets where VNRMCs, who have hitherto been victims of unfair forestland deals and transactions can participate fairly</li> </ul>	<ul style="list-style-type: none"> <li>• The policy is very new and its implementation is just beginning. Major problems expected are the inadequate capacity within government and related institutions to coordinate its implementation, the lack of political willing and risk to implement major land reforms and the expected high cost of the reform programme</li> </ul>
<i>The Environmental Policy</i>	<ul style="list-style-type: none"> <li>• Ensures that all policies promote sustainable development</li> <li>• Advocates for efficient utilisation of natural resources</li> <li>• Enhance public and community awareness of the importance of sound environmental management</li> <li>• To promote cooperation between Government, local communities, women groups, non-governmental organisations and the private sector in management and sustainable utilisation of the natural resources and the environment.</li> </ul>	<ul style="list-style-type: none"> <li>• Major problems are the inadequate capacity within government and related institutions to coordinate its implementation, the lack of political will and risk to implement environmental impact assessments and that many organisations are not aware of the provisions of the Environmental Management Act (EMA).</li> </ul>
<i>Decentralisation Policy</i>	<ul style="list-style-type: none"> <li>• Integration of forestry into the overall district development planning system, thereby putting NFP priorities within the overall development and poverty reduction agenda.</li> <li>• Forestry activities benefit from financing that has hitherto not been supporting forestry.</li> <li>• Multi-stakeholder forums like the district executive committees, district assemblies and others that involve a number of players can now discuss forestry in the context of district development.</li> <li>• Local community participation through area, village and other committees encourage communities to prioritise their own needs</li> </ul>	<ul style="list-style-type: none"> <li>• Sectors not willing and reluctant to devolve authority</li> <li>• In some cases too many roles are devolved at one time without due capacitation at the district level</li> <li>• No specific finances to support devolution</li> </ul>
<i>Forestry Policy</i>	<ul style="list-style-type: none"> <li>• <i>Aims to contribute to poverty reduction</i></li> <li>• <i>Holistic and comprehensive participatory approach</i></li> <li>• <i>New challenges, new institutions and mechanisms:</i></li> <li>• <i>New sources of forest finance: Recognises and promotion of non-state actors:</i></li> <li>• <i>Innovative and progressive mechanisms for community participation</i></li> <li>• <i>Promote cross-sectoral linkages: Community based enforcement mechanisms</i></li> </ul>	<ul style="list-style-type: none"> <li>• Major problems are the inadequate capacity within government and related institutions to coordinate its implementation,</li> <li>• The lack of political will and risk to implement forestry reform as guided by the NFP</li> <li>• The lack of awareness among implementers of the forestry policy and the NFP</li> </ul>

The arrow A shows some hierarchical and power relations between the policies and their intended benefits. Arrow B shows the constraints that have to be addressed if the benefits are to be achieved.

In term of implementation, it has been reported that before the NFP was adopted, there was a “policy vacuum” in the

forestry sector, as implementation of the policy, with its new imperatives, had stalled due to lack of a coherent mechanism and decisive implementation framework for the new policy challenges. There were no tools and tactics to pull stakeholders towards the common goal of sustainable and pro-poor forest management. Decentralised institutions like VNRMCS, ADCs and VDCs were not in place to catalyse action on the ground. Democracy was also new and society had not been transformed to engage with Government in participatory forestry management. This was also a cause for illegal activities and failure to implement policies. The Government realised that even with the good intentions of the forestry policy, some critical issues like the role of traditional authorities in forest management were not clear either in the policy and the Act. The Government then conducted an in-depth consultation process, which clarified these issues through the Supplementary Policy and guidelines on community-based forestry, which have now been approved. Despite the improvement in the policy framework, public awareness on these documents is very low, leading to many stakeholders doing illegal activities indicated above because of ignorance.

### **The Malawi NFP**

The NFP is an agreed strategic framework of priorities and viable actions for improving forestry and livelihoods. It aims to link policy and on the ground practice so that both are continuously improved in favour of good forestry for poverty reduction (NFP, 2002). The preparation of the NFP was done through a participatory process that involved a wide range of stakeholders, with varying degrees of power and potential to contribute to forestry. These stakeholders ranged from public, civil and private sectors, representing different and sometimes conflicting interests and stakes in the forestry sector.

## **6.0 The Forest Act and Law Enforcement**

The main framework defining legality is the Forestry Act of 1997. The Forestry Act is the legal framework to support implementation of the Forestry Policy, including the pro-poor elements mentioned above. The Forestry Act provides for participatory forestry, forestry management, forestry research, forestry education, forest industries, protection and rehabilitation of environmentally fragile areas and international co-operation in forestry. Among other purposes of the Act, the following relate to the protection of forests from illegal human activities.

- To augment, protect and manage trees and forests on customary land in order to meet basic fuelwood and forest produce needs of local communities and for the conservation of soil and water.
- To promote sustainable utilization of timber, fuelwood and other forest produce.
- To control trafficking in wood and other forest produce including exportation and importation.
- To protect fragile areas such as steep slopes, riverbanks, water catchment and to conserve and enhance biodiversity.

Section 63 parts X of the Forestry Act relate to offence and penalties. Part X defines offences against the Forestry Act. Offences have been categorized based on the following areas;

- Offences relating to forest fires.
- Offences relating to wildlife.
- Offences relating to forest pests and diseases.
- Offences relating to possession or trafficking of forest produce.
- Offences relating to obstruction of officers.
- Offences relating to official documents or stamps.
- Offences relating to possession or use of weapons, traps, explosives and poison for hunting animals.
- Offences relating to deposition of litter and waste.
- Offences relating to import, export and re-exporting of forest produce.
- Additional orders upon conviction.
- Authority to compound offences.

Offences relating to forest reserves and protected forest areas are the commonest. Currently, for example, fourteen forest reserves are encroached. Encroachment of forest reserves is undertaken in the form of opening up gardens, production of charcoal from indigenous tree species and putting up buildings in forest reserves. Damage caused by encroachers in forest reserves is immense and relates to; environmental, aesthetic, medicinal, tourism, educational and scientific. Section 64 covers for four subsections. It is section 64a, 64c and 64d that are most contravened. Section 64a states that any person who without authority under Forestry Act fells, cuts, takes, destroys, removes, collects, uproots any indigenous tree or forest property in a forest reserve or protected area commits an offence. Encroachment with respect to section 64a is related to cutting, taking, destroying, removing and collecting forest produce.

Section 64c states that any person, who without authority under the Act squats, resides, erects a building, hut, livestock enclosures or any structure in a forest reserve or protected area commits an offence. This offence is undertaken in the form of encroachment particularly residing and erecting houses in forest reserves.

Section 64d states that any person, who without authority under the Forestry Act clears, cultivates, digs or breaks up land for any road or for any purpose whatsoever and grazes livestock in a forest reserve or protected area commits an offence. Encroachment with respect to 64d is related to clearing and cultivating in forest reserves. Offences relating to possession or trafficking of forest of forest produce as defined in Section 68a, 68b and 68c are also common. The Department of Forestry reports that since 2000, there have been increased cases of persons importing or exporting forest produce through unchartered (illegal) borders routes. For example, timber and charcoal from indigenous trees species originating from Mozambique and Zambia have been confiscated in the urban areas of Blantyre, Thyolo, Phalombe, Mulanje, Mangochi, Mchinji and Lilongwe by forestry officers on patrol. And forest produce exported without valid licences from Malawi have been confiscated in neighbouring countries. It is an offence to export or re-export any forest produce, through any other route other than a Custom's Post or port (section 73). However, this issue requires consultation and collaboration between Malawi and neighbouring countries, as it is a cross border issue. It can be taken through the joint

permanent commissions, which Malawi has with Zambia and Mozambique, or through the Southern African Development Community (SADC).

According to the Department of Forestry, the above offences are the commonest, however, there are other offences related to other aspects such as torching forests, offences relating to disposition of litter and waste and offences relating to possession or use of weapons, traps, explosives and poisons for hunting animals.

A major feature of forestry law enforcement is that most efforts aim at curative enforcement not preventive ones. For example most of the charcoal and firewood confiscation is done by the road side, along the market chain and not at the source of forestry produce, as a result it is only the effects that are addressed not the root causes, which are explained in this report (where??). The Forestry Department, in a bid to publicize the Forestry Act and policy has also conducted sensitization meetings with the Judiciary (magistrates), police officers and District Commissioners from various districts in the country.

## **7.0 Reasons why the Forestry Policy and legislation are not being implemented**

### ***7.1 Policy direction and clarity on key issues such as charcoal production***

Despite the good intentions of the Forestry Policy and legislation, there still remain a number of barriers and constraints that inhibit implementation at all levels. From a strategic level, it still not clear which direction the Department is following in terms of key policy issues of community participation, benefit sharing with communities, charcoal production and institutional reform.

#### Thuma Case Study

An attempt was made at Thuma Forest Reserve to implement law enforcement (focussing on confiscations) using community members through the Lilongwe Forest Project. An arrangement for benefit sharing was agreed and implemented over some period. Illegal charcoal stopped during the period. The project also constructed a very good road to Chinkhokwe Village. But the FD failed to continue remitting benefits to the community because there was no policy support for the initiative. With the good road, charcoal production increased again after the FD discontinued the arrangement.

### ***7.2 Stakeholder capacity***

The capacity of the FD remains weak and uncertain in the long-term, due to problems of dwindling public finance, increasing impacts of HIV/AIDS and high staff turnover. Motivation among the existing public staff is also low, leading to inadequate commitment to implement the policy. There is also lack of strategic and financial commitment to major reform processes and new trends that could steer the Department to new horizons-these reforms include decentralisation, private sector participation, response to HIV/AIDS and collaboration. At district and community level, forestry extension staff lack capacity and do not have adequate convening power in terms of financial, material and skills required to mobilise communities and other stakeholders to support forestry. Where resources have been provided, the capacity has improved and DFOs have become more active, relations with other sectors have also improved<sup>20</sup>

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<sup>20</sup> See lessons learnt products under the GoM/EU Social Forestry Project-1997-2003

The capacity among NGOs is also constraining implementation of the Forestry Policy. As a result, many NGOs only get involved in traditional tree planting activities, without engaging in more innovative approaches to community participation like co-management, forest capacity building and other partnerships as in the NFP. This problem is aggravated by inherently inadequate capacity, short-term programmes and limited outreach associated with NGOs themselves.

### ***7.3 No simple tools and tactics for converting policy and legislation into actions***

The other problem is that although frontline workers might be aware of the general principles and pronouncements of the policy and legislation, like *improving community participation, controlled and monitored access to resources etc*, they have problems in interpreting what these actually mean and imply in practice, and eventually how to convert them to community activities on the ground. Although the Government has moved a step by issuing a supplementary policy and community-based guidelines to clarify the questions above, extension workers still need awareness, tools and skills to put the policies in practice. Furthermore these policies and laws are written in English and yet not many of the extension cadre are familiar and conversant with the legal and policy language that is used in the instruments.

### ***7.4 Extension staff are powerless and caught between two powerful masters***

Unbalanced power relations are a major cause of failure to enforce the forestry law and implement the policy. In the Thuma case study, it was also noted that despite commitment from forestry extension workers, they cannot effectively enforce the law because they are caught between two powerful institutions. One is the community and the other is the Forestry Department. Despite that these extension workers belong to the Department, they stay together with the people, share same community resources, their children go to the same community schools and drink from the same sources of water. It becomes very difficult within these circumstances and relationships to enforce the law, confiscate charcoal, firewood and timber and still perform the role as extension worker. The impact is that illegal activities continue to happen in the villages, in the eyes of forestry workers. In such cases enforcement only targets middlemen, who are normally not members of the village - a situation, which does not solve the problem as it targets wrong people (effects and not causes).

### ***7.5 The power of poverty***

High levels of poverty and food insecurity frustrate FD staff, local institutions and community leadership to the extent that they end up with a *laissez faire* approach. Over 65% of the Malawian population is classified poor. At village level, poverty is mainly characterised by lack of food, livelihood assets {e.g.} and general vulnerability to external shocks. The Thuma case study shows that because of increases in agricultural inputs, especially fertiliser and

#### **Consequences of withdrawal of ADMARC produce markets on charcoal and other illegal activities**

The community in Thuma indicated that since ADMARC, the only public grain marketing board in Malawi withdrew its market from the Chimkhokwe village, the community cannot engage in farming as they cannot sell their produce. As a result, they resort to charcoal burning, which has a readily available market. ADMARC also used to sell agricultural inputs close to the community, but now it does not hence is no longer a viable income generating activity to the community.

seed, following de-subsidisation of the economy by the Government under the World Bank and IMF structural adjustment programmes (SAPs), many smallholder farmers cannot afford to produce enough maize and other crops to feed their often large and extended families, which have even expanded further with orphans due to the impacts of the HIV/AIDS pandemic. Even the few farmers that have capacity to buy fertiliser and produce excess crops for sale, are constrained by long distance to markets, which has also been aggravated by the closure of ADMARC's bush markets, following its commercialisation process. The major impact of this, as the case study has shown is that the community's livelihoods have been threatened and forest-based activities, whether legal or illegal, become a solution. In fact many communities were saved from the fatal famine of 2001-2002 by illegal charcoal, timber and wood selling. In a vicious circle, once engaged in charcoal business, many households do not switch back to agriculture, creating a permanent dependency on forests and persistent food insecurity.

### **7.6 *Votes, forests and powerful politicians***

Forests have also fallen victims to regular negative political influences- there are reported cases where forests have been used for individual political gains-politicians indulging in illegal activities to promote their political mileages, like cases where politicians have promised to distribute forestlands to the community in return for votes, especially in land constrained districts. Confiscated forest produce has been released without the due course of the law as provided in the Forestry Act because of political interference. Due to such pressure and imbalance in power relations, in disfavour of foresters, officers indicated during consultations that it is difficult to enforce the law and reduce illegality.

### **7.7 *Roles are defined, clarified but not disseminated***

Although roles are clearly defined in the NFP, they have not been disseminated among various stakeholders. A group of Forest Guards that we met during consultations at Chinkhokwe had not seen an NFP document, although they have heard about it. Between the top and the bottom, the line of demarcation is not clear. This is because of the inadequate public awareness activities within the policy and the NFP. Even those who know the roles, there are no accountability mechanisms (such as a consistent reporting mechanism) to check implementation. This results in the attitude that the FD should do everything related to forestry.

In summary the Table below has been drawn up from discussions held with people and traditional leaders from GVH Mankhamba (case study site for compliance) and Chinkhokwe Village (case study site for non-compliance), along Thuma Forestry Reserve, where site meetings were held to investigate causes and factors that influence compliance with legislation. In general the findings relate well with those found by Janet Lowore (2000) as reasons for success of social forestry in Bwanje Valley.

**Table 2: Factors that facilitate compliance and non-compliance**

Very useful table – though not really about only policy and legislation – some are broader

<i>Factors that facilitate compliance and legality</i>	<i>Factors that promote non-compliance and illegality</i>
Wealth status in the village and status in the society-those well-off, do not engage in illegal activities (at community level)	Vulnerability to famine-when households are vulnerable to poverty and food insecurity-they have no time, money and energy to wait for forestry permits and licences.
Simplicity of a getting a permit/licences: those that trade in bamboo products (legal) say it is easier to get a permit for bamboos	Complicated procedure is a disincentive to legality-licences or permits given by the FD Head Office are not easy to obtain-unlike those that are decentralised to DFOs and plantation



	offices.
Most NTFPs don't need licences hence communities are free to collect them	Value of the product that needs to be licensed:- those considered valuable to the community (like charcoal and timber) require more rigorous licensing procedures, which are done at head office, which the community is not ready to follow - leading to non-compliance
Presence of incentives-like benefit sharing, alternative livelihoods sources like income generating activities, wage earning public works/ community afforestation work to compensate time and energy lost, low interest credit etc. motivates communities to comply with legislation, at least in short-term.	Absence of incentives-communities not motivated by self-help work without individual or household benefits.
When roles are clearly defined and each player knows them there is tendency to comply.	When roles are not clear, the tendency is to leave everything to the Forestry Department to enforce.
Strong, but democratic local institutions like VNRMCS, Local Forest management Boards, District Environment Subcommittees enable communities to participate in decision making about what is good and bad for their forests.	When you have undemocratic institutions, which are not even linked to traditional leadership, conflicts arise and pave way for illegality.
Active participation of a broad range of stakeholders (including the private sector and civil society) in forestry issues facilitate legality as there is sharing of expertise and resources to implement the Forestry Act.	Apart from the now defunct NFP forum, mechanisms for sharing experiences and lessons (the learning process) are absent in the policy
Clear and participatory benefit sharing mechanisms promote ownership of law enforcement by the community - because they know they will be rewarded for a job well done.	When such benefits are managed without accountability and in non-transparent ways.
Extension workers who are participatory, engage with communities, network with other service providers, respect peoples needs will facilitate effective law enforcement because communities feel their needs are being taken care of and are involved in decision making.	Effective extension services-forestry extension combines with law enforcement. This dualism inhibits effectiveness of both services and lead to illegality-which one comes first? This is a common dilemma for extension workers.
Fewer and affordable licences, available locally and consistently promote compliance	Too many licences and permits required for forestry activities and yet paperwork? supervision and monitoring is weak
Resource availability - when households are surrounded by many trees, be they on customary or public land, they think there is no need to comply with legislation because "there are many trees which cannot be finished" as one charcoal transporter commented.	Contradictory elements in the law make it difficult to interpret it homogenously.

### **8.0 Example of illegal activities: Charcoal production and marketing**

Under the Section 81 s.s 1 of the Forestry Act, charcoal can be produced only under a licence issued by the Forestry Department, when it is satisfied that the source is sustainable, guided by a forest management plan. Many communities are aware that charcoal production without a licence from FD is illegal. What they are not aware is that the FD is also mandated to produce forest management plans, to enable it decide whether charcoal can be produced from a particular forest or not. Of the 78 forest reserves in Malawi, only one has a management plan, which is also reportedly to old to be used. As a result, decisions to reject charcoal burning and production are not justified by any forest management plan at all. This is also illegal. Failure to develop management plans for forest reserves and areas has been a major failure on part of implementation of forestry legislation. Because there are no management plans for forest reserves, there are also no guidelines for charcoal production from both customary land and forest reserves.

As a result communities continue to produce illegal charcoal, forests continue to degrade, livelihoods of the people who depend of these forests are threatened. In addition the Government

is losing a lot of potential revenue income from illegal. With a management plan in place, government could easily provide a licence for charcoal, tax producers and earn revenue, which it can reinvest in management and pay for control and law enforcement.

Not all people in a given village engage in charcoal production. Discussions with people at Thuma Forest reserve indicated the community can be divided into three wealth groups: the core poor, the middle poor and the well-off ones.

The middle poor are the main producers of charcoal. The core poor are either too weak or too old to engage in charcoal production. However they depend on support from the other groups, including safety-net support from charcoal producers. The wealthier ones do not engage in charcoal because of its arduous nature, fear of health risk and because they concentrate on agriculture. Charcoal producers are desperate for food and income at most times of year, as a result they tend to have weak bargaining power for prices.

Charcoal prices are therefore determined by middlemen. In the end benefits increasingly accrue more to the middleman, urban women sellers and eventually the end user, who saves on electricity, in that order. The table below shows the value added on a 50 kg bag of charcoal (Thuma-Nkhoma-Lilongwe City road case study).

### Charcoal production benefits the rich more than the poor

From the analysis in Table 2 below, it is clear that charcoal is a lucrative business that cannot be stopped. Charcoal has a ready market in urban areas (Lilongwe for this case) due to high electricity tariffs. But most of the benefits of charcoal are exported outside the surrounding village and more seriously outside the forest reserves. Government should make some hard decisions to pilot legal production of charcoal need to be made, especially in Thuma where such a decision can be easily monitored. For the 8 bags that a producer makes within a week, he only earns Mk600, which is only about 15% of total

**Table 3: Rough estimation of costs and benefits of charcoal production (from Thuma-Nkhoma-Lilongwe Road Case study)**

Item	Producer	Middleman on a bicycle	Middleman (urban vendor-after restacking into smaller units)	User-middle income earner leaving in medium density area, saving MK1000 per week electricity bill
	SOURCE			
<b>Costs (MK) (per 50kg)</b>				
Food	15	20	300	0
Cost of the bag	0	100	0	500
Equipment/bicycle	10	20	0	0
Accommodation	0	20	0	0
<b>Total costs</b>	<b>25</b>	<b>160</b>	<b>300</b>	<b>500</b>
<b>Total income/benefit (per 50kg)</b>	<b>100</b>	<b>300</b>	<b>500</b>	<b>1000</b>
<b>Net income</b>	<b>75</b>	<b>140</b>	<b>200</b>	<b>500</b>
8 bags produced in a week per producer	600	1120	1600	4000
Each bicycle carries an average of 3 bags	MK225	MK420	MK600	MK1500
Daily estimate of number of bicycles (by DFO)=80-120, estimated average of 100/day	MK22500.00	MK42000.00	MK60000.00	MK150000.00
Annual income (2 days a week of business)	MK2,340,000	MK4,368,000	MK6,240,000	MK15,600,000

In terms of marketing, only about 10% of charcoal producers transport their charcoal produce to urban areas for sale on their own. The figure is low because charcoal production too laborious and time intensive, such that producers find it difficult to combine production and transportation to the market. The majority (90%) sell their charcoal to middlemen vendors who come to the area to buy and transport the charcoal to urban areas on push bicycles and vehicles. In the case of Thuma forest reserve, the main transport used is a bicycle. The community reported no large trucks transporting charcoal. Middlemen take about 12 hrs to cover a distance of 70 km to Lilongwe city. In the city, vendors buy the charcoal at MK300 per 50 kg bag. The bag is opened and repacked into 20 smaller bags or smaller heaps, which are sold at MK30 each.

It is obvious from the above figures that illegal charcoal production cannot be stopped by mere patrols and confiscation, because it has become a major economic activity and people along the chain above have now taken it as a fulltime business, with very little capital and operational costs required, stable market in urban areas and quick returns to investment.

Production takes place once a week while transportation operations are done in rotational way, twice a week. The price per bag is determined by the transporters, because they are more affluent and are aware of the market. They have more bargaining power and have cash with them. Since the transporters move in groups, they operate like associations and agree before hand how much to buy each bag. There are no such semi-organised groups for producers in Thuma forest reserve.

It was also learnt that there are also seasonality, demand and supply influences on illegal charcoal production. During dry season, the soil is too hard to enable construction and moulding of charcoal kilns hence, many people do not engage in charcoal burning. Instead they opt to switch to bamboo basket making, where they are able to legally buy permits for bamboos in forest reserves. They backslide during rainy season. During the dry season, there are also a number of seasonal economic, cultural and social activities that keep people busy, most households do have food and the weather is warm enough (low demand for charcoal). These factors reduce both the supply and demand for charcoal. During the rainy season the situation is exactly opposite.

## *8.1 Impacts of illegal charcoal production*

### **8.1.2 Economic losses**

- For the Government: Economic losses arise when the government cannot collect taxes from illegal forestry transactions like theft, unlicensed products and illegal timber exports.
- For communities: Communities also lose income by not charging a levy on outsiders who exploit their resources through unlicensed charcoal and timber activities. Even in areas, where timber might be licensed, the community loses (all revenue is exported to treasury), especially when it does not have any benefits sharing arrangement with the government. In Malawi, the system to detect, determine and deal with illegality in forestry is very weak, therefore it is very difficult to quantify the actual costs of illegality.
- For businesses and other stakeholders: Other economic losses arise from frequent power failure by the Electricity Supply Commission of Malawi (ESCOM), which stems from siltation of the Shire river basin.

### **8.1.3 Forest resource degradation**

In terms of promoting resource degradation, illegality knows no sustainable forest management. Illegal bushfires have resulted in loss of tree resources (qualitatively and quantitatively), like over

the past 10 years, 25000 hectares of plantations have been destroyed by illegal fires<sup>21</sup>. Illegal charcoal burning and tree felling have caused serious deforestation and loss of tree cover on customary land. Resource degradation means that the habitat for some rare flora and fauna has been destroyed, which negatively impacts on tourism development.

#### **8.1.4 Livelihood deprivation**

Illegal activities deprive livelihoods for the communities in which such activities take place. In Thuma forest reserve, due to high levels of charcoal burning having stripped tree cover, households, especially women, have to walk long distances to collect NTFPs, which are an important source of livelihood for the community. In addition because the community does not collect any fees from the charcoal, the village economy is exported to urban areas without any gains accruing to the wider local majority (see table 2 above). This contributes to chronic poverty in the area. Eventually the community is caught in the vicious cycle of poverty. When communities lose livelihoods through illegal activities, there are increased cases of HIV/AIDS due to increased vulnerability, especially among the already vulnerable groups, like women and girl children, who may resort to selling unprotected sex in exchange of income or food. Other livelihood losses come about due to frequent flooding, which cause loss of crops, livestock and at times loss of life. The root cause of flooding is destruction of catchment areas for rivers and streams.

#### **8.1.5 Social and gender losses**

There are many losses that relate to the way the society operates in a community. Illegal forest activities like charcoal burning result in complete destruction of areas with spiritual values such as old settlements (and their associate graveyards). They also lead to increased community conflicts due to scramble for firewood, grazing land and others. Women, who are traditionally firewood fetchers in Malawi have to walk a long time to collect or “dig” firewood, suffer major impacts of illegal forestry activities. There are reported cases of increased gender-based violence resulting from problems associated with women being away from home for a long time fetching wood.

### **9.0 Best bet strategies for formulation, mechanisms/structures for legislation and enforcement.**

In order to strengthen law enforcement and improve forest governance to ensure that the forestry sector contributes to poverty reduction, we suggest the following next steps:

- Although the national Forestry Policy, the Supplement to the Policy and the Forestry Act provide for local institutions for participation of communities in forestry management there is inadequate awareness on the provisions of these frameworks and how they should be implemented at grass-root level. ***We recommend that a public awareness programmes be implemented as a priority to support understand of the forestry policy and Act which will eventually improve on compliance and enforcement.***
- Most local forestry institutions such VNRMCS lack legitimacy and are not accountable to the communities they are intended to represent. In some cases they are in conflict with traditional authorities due to poor co-ordination. These conflicts result in illegal activities going unchecked and in some cases actually promote illegality. ***We recommend that the Forestry Act be amended in accordance with the Supplement to the Forestry Policy so as to clarify***

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<sup>21</sup> Forest Privatisation Initiative Malawi, September 2003: Changing Ownership of Malawi’s Industrial Plantations.

*the roles and responsibilities of such institutions as VNRMCS and traditional leaders and their accountability to local communities and existing institutions at local or district levels. This could be done through regulations made under the Forestry Act.*

- Charcoal remains the most important illegal activity that generates income for the rural poor living along forest reserves. *We recommend that the Government should pilot a charcoal licensing system that ensures that benefits from charcoal sales are equitably shared between the community, the vendors, the forest reserve and the Government.*
- Legislation should make direct link between conservation and poverty reduction otherwise poor people will not see the reason for the participation as it detracts them from their search for livelihoods. *We recommend that clear benefits for individuals participating in forestry management should be spelt out in the policy and legislation. This could be done through national guidelines on benefit sharing for communities participating in forest management.*
- Policy intervention in forestry management has tended to treat forest dependent communities as a homogenous group. The result has been lack of focus on specific group needs and requirements, hence leaving a disenfranchised group that perpetrate illegal activities for livelihoods needs such food, fuel and wood that policy and legislation is not addressing. Such an approach will require better information that can assist forest extension workers and law enforcement to monitor activities and trends and respond accordingly. *We recommend that the Department of Forestry compile desegregated data of forest dependent communities to enable them respond to each group accordingly. This process can also support the recommendation to pilot charcoal licensing as indicated above.*
- The Forestry Department implemented a number of NFP forums when the NFP was being developed. *We recommend that the Department should revive the NFP forums, the relevant working groups and other consultation forums to enhance sharing information, learning and consultation, which are important for improving law enforcement.*
- Provide more tangible benefits for community participation in forests management. In order to encourage local communities in the enforcement of forestry regulations more space should be created for benefiting communities. For example, part of fines paid in forestry offences could be channeled to the local community in which the offence was committed. This should especially be the case where the community assisted in providing intelligence and or arrest. The funds would then be utilized for the benefit of the community concerned. Current legal framework does not provide for this though the community by-laws authorize imposing fines and the fines to be used locally.
- The Government is currently implementing the Decentralisation Policy in Malawi. Although forestry is targeted for decentralisation, not much understanding is available on implications on decentralisation on forest resources. *We recommend that the FGLG should assess the potential role for decentralised forest institutions to enforce the law and promote legality and good governance in the sector.*
- **Flexible management authorities:** Participation in management of forests should be freely chosen by the community including the manner in which they want to

participate in the exercise. The Forestry Act provides flexibility specifically to ensure that the local community can see benefits in sustainable forests management and therefore choose to participate. Hence a facilitated process whereby the community reaches an understanding and agreement that they wish to participate in the process is essential. The community will thus agree that they would do this through a VNRMC to be established or through an existing committee of comparable functions or the institution of the village headman will be utilized for the purpose. Many villages have VNRMCs but their relationship to VFAs is not clear. It is essential that this be clarified between the DOF, village heads and VNRMCs.

#### **10. Areas for further analysis and research**

The following areas need further investigation:

- Quantifying livelihoods benefits from forest reserves by surrounding communities
- Assessing potential role for decentralised forest institutions to promote legality or illegality
- Detailed stakeholder analysis to identify power relations and potential to enforce the law and contribute to good governance

## **Annex 1: People consulted**

Mr. K. Nyasulu	Director, Forestry Department
Mr. J. Ngalande	Deputy Director, Forestry Department
Mr. W. Simwela	Assistant Director/Planning, also FGLG Coordinator-Malawi
Mr. R. Kafakoma	FGLG Member and Executive Director, TSP
Mr. A. Anton	Technical Assistant, Forestry Department
Mr. S. Kainja	Assistant Director/Planning, Forestry Department
Mr. T. Kamoto	Principal Forestry Officer,
Mr. S. Gawamadzi	Economist
Ms Margaret Loka	Training Support for Partners
Mr Kadyamo	Human Resources Officer, Forestry Department
Mr. Keith Dolman	Team Leader, Forest Privatisation Initiative in Malawi
Mr M. Nyalubwe	Charcoal Vendor
Mr. Shuga Mulamba	Charcoal Vendor
Mr. Gideon Nasoni	Charcoal Vendor
Mr. P Mgangira	Councillor
Mrs Mvula	DFO, Lilongwe
Mr Chigaru	ADFO, Lilongwe
Mr. Tony Finch	Chairman, Wildlife Action Group
Mr. Jezala Phiri	Charcoal Vendor
GVH Chikhokwe and their people	Charcoal Vendor
GVH Mankhamba and their	Charcoal Vendor