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'Town Chiefs' in Malawi

**Diana Cammack, Edge Kanyongolo
and Tam O'Neil**

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Summary

This study of ‘town chiefs’ initiates a long-term programme of research on local leadership in Malawi. It contributes to the Local Leadership and Governance (LL) research stream of the Africa Power and Politics Programme (APPP).

Local Leadership is one of six research streams within the APPP, the high-level objective of which is to use systematic research in and about sub-Saharan Africa to identify forms of governance that might work better for development than those currently in place. To this end, the Local Leadership team is exploring forms of authority, legitimacy and accountability that are more (and less) conducive to sub-national leaders’ correcting the under-provision of vital public goods in their jurisdictions.

Town chiefs are one type of hybrid political order or governance ‘mode’ in Malawi; they operate within overlapping normative universes, and perform acts which have both historical resonance and modern purposes. Whilst known collectively as town chiefs, they assume a number of titles, and have various characteristics, roles and authority. Their behaviour facilitates community action, social order and cohesion, producing a variety of public goods that we consider developmental.

Section 2 outlines the major local governance structures and trends that have emerged in Malawi since colonialism, presenting a brief review of legislation that has influenced the activities and powers of local councils and traditional chiefs. Given their affinity to town chiefs, Annex 3 provides a summary of the *de jure* and *de facto* roles and authority of traditional chiefs to facilitate comparison. A brief overview of urbanisation demonstrates that Malawi’s towns are growing rapidly and in a largely un-planned manner.

Section 3 reports the main findings from the fieldwork, indicating that town chiefs are unrecorded but numerous, and stand outside the law but are widely recognised and valued. Town chiefs have different origins, forms of authority and legitimacy, some more closely aligned to those of traditional chiefs and others rooted more in democratic or party institutions. Their existence and roles fulfil a need created by a vacuum in urban governance and their nature reflects a notion of leadership shared by ‘translocal’ Malawians.

The functions of town chiefs may be divided into six main categories which emerged from our interview data: cultural affairs, administration and management of various sorts, oversight of issues related to land and property, resolving disputes, an involvement in politics, and promoting economic and social development. Their ability to sanction members of their communities to ensure conformity is outlined, and other aspects of their authority, accountability and legitimacy are discussed in brief. Their motivations as well as their relationships with other local actors are summarised.

Section 4 considers the findings in the light of APPP’s interest in collective action problems, the production of public goods and notions of hybridity. We conclude with a warning that these findings on town chiefs are tentative and that any attempt to design local governance programmes that ‘go with the grain’ at this stage would be premature and could be harmful.

Acronyms

ABIA	Advisory Board for Irish Aid
ADC	Area Development Committee
APPP	Africa Power and Politics Programme
CEO	Chief Executive Officer
DANO	District Administration (Native) Ordinance (1912)
DC	District Commissioner
DDC	District Development Committee
DPP	Democratic Progressive Party
GVH	Group Village Headman
LL	Local Leadership (research stream of APPP)
LLB	Local Land Board
MCP	Malawi Congress Party
MP	Member of Parliament
MYP	Malawi Young Pioneers
NA	Native Authority
NAO	Native Authority Ordinance
NGO	Non-Governmental Organisation
OPC	Office of the President and Cabinet
PC	Paramount Chief
SSA	Sub-Saharan Africa
STA	Sub-Traditional Authority
TA	Traditional Authority
TC	Town Chief
UDF	United Democratic Front
VCD	Village Development Committee
VH	Village Headman

'Town Chiefs' in Malawi

Diana Cammack, Edge Kanyongolo and Tam O'Neil*

1 Introduction

This study of 'town chiefs' initiates a long-term programme of research on local leadership in Malawi. It is part of the Local Leadership and Governance (LL) research stream of the Africa Power and Politics Programme (APPP). It comprises a two-part scoping exercise of town chiefs, which will feed into the design of the longer-term (3 year) project. The first stage of field research, undertaken by Edge Kanyongolo and Diana Cammack in Sept-Oct 2008, covered the central and southern regions, followed by a survey by these two with Tam O'Neil of the northern region in March 2009.¹ We reported our findings to a LL theme meeting in April 2009, and they have been used to inform the design of the long-term, sub-Saharan African (SSA) LL research programme.

Local Leadership and Governance (LL) is one of six research streams within the APPP, the high-level objective of which is to use systematic research in and about SSA to identify and describe forms of governance – interpreted broadly as the exercise of power in the management of society's resources – which work significantly better for development and poverty reduction than existing arrangements. We are undertaking empirical investigations of the nexus between power and authority and their institutional determinants on the one hand and the provision of public goods that are known to be important to final development outcomes, such as growth, on the other. Our working hunch is that institutional arrangements which work with the grain of extant power relations and incentive structures are more likely to enable groups (whether within state or society) to overcome the collective action problems inherent in public goods provision. The next three years of the APPP will be dedicated to moving from this hunch to firm hypotheses about what this might mean in practice (Booth, 2008).

To this end, the LL team is exploring forms of authority, legitimacy and accountability which are more (and less) conducive to sub-national leaders correcting the under-provision of vital public goods in their jurisdictions. Research on various hybrid governance modes or political orders – meaning those that are influenced by a plurality of (official, professional, social and practical) norms (Olivier de Sardan, 2008) – will be undertaken in 6-7 countries. In Malawi, the research is focusing on rural and urban chiefs, who retain more *de jure* and *de facto* power than in many other African states.

The authors first discovered town chiefs (TCs) in the north and south of Malawi during fieldwork in October 2006 on the politics of decentralisation, as part of a project on good governance and aid modalities for the ABIA (Cammack et al., 2007). Then we took note of how town chiefs appeared to play some role in the delivery of public goods and had some means of bringing people together to perform certain beneficial community activities. A subsequent literature review revealed that town chiefs are under the radar of academics and donors alike (and of many government authorities) and are virtually undocumented.

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This study returns to town chiefs, who are known locally by a number of different names, in an attempt to begin filling this gap. It documents their various characteristics, roles and authority, and how they interact with other local leaders as well as the people they purport to represent. We begin to identify the type of public goods they appear to produce. The study identifies them as one type of hybrid political order for they operate within overlapping normative universes, and perform acts which have both historical resonance and modern purposes. Their behaviour facilitates community action, social order and cohesion, producing a variety of public goods that are developmental. Some are less obviously so because they fall outside donors' normal definition of developmental 'outputs', but they are deemed by us as key to bringing order and structure to communities that might otherwise be overwhelmed by diversity and discord. We see their presence and activities as enhancing the urban community's ability to work together.

Below we combine much of the material we gathered into a single story, though we must stress that we recognise that there are significant differences between the various town chiefs we met. In future work more detailed data collection will document the similarities and differences, as well as the overarching patterns that define town chiefs.

The next section describes contemporary urban governance structures, actors and trends and locates these by providing a brief historical overview of local governance in Malawi. Section 3 then reports the main findings from the fieldwork. It describes the prevalence, origins and status of town chiefs, their functions and relationships, and their authority. Given the affinity of town chiefs to traditional authorities, Annex 3 provides a summary of the *de jure* and *de facto* roles and authority of traditional/rural chiefs to facilitate comparison. This is organised according to the six main functions performed by town chiefs, as identified during the fieldwork. Section 4 concludes by considering the findings in the light of the LL and APPP research questions.

2 Background

This section provides background on: (i) the main trends and shifts in local governance during colonialism;¹ (ii) the local governance structures that have developed in Malawi since independence, with particular reference to the organisation, authority and functions of local councils, the office of the District Commissioner (DC) and traditional chiefs; and (iii) urbanisation trends and contemporary governance.

2.1 Local governance during colonialism

During colonial state formation, local governance structures moved through four main phases. First, between 1891 and 1912, the British, through coercion and co-optation, established control over the territory and imposed a system of direct rule. British officials, under the leadership of the Resident or Commissioner at district level, kept the peace, raised and spent revenues and adjudicated western-inspired law.² Second, between 1912 and 1933, indigenous leaders were formally recognised and the foundations were laid for what later became known

1 The importance of situating post-independence structures within the broader historical framework of colonial state-formation and pre-colonial political organisation is recognised, but is beyond the scope of this paper. This will be given fuller consideration in the research on Traditional Authorities in Malawi, which will be conducted alongside research on town chiefs for the LL theme.

2 Rotberg (1966, citing 1932 *Handbook of Nyasaland*) reports that, by 1904, the power of 'native chiefs' had 'decayed', villages were 'splitting up ... into small family groups' and the chiefs 'played "no real part in the affairs of their country"'. The notable exception was the Northern Ngoni, the only indigenous group who retained a centralised and hierarchical political structure by the late 19th century and who did not have the District Administration (Native) Ordinance imposed on them until 1915, when punished for refusing to supply soldiers for the first World War (Vail and White, 1989).

as ‘indirect rule’. The 1912 District Administration (Native) Ordinance (DANO) created a new hierarchy of ‘traditional’ authority – Principal and Village Headmen – reporting to the District Resident and assisting him by maintaining law and order, encouraging tax-paying, providing sanitation, controlling cattle movement and overseeing general welfare. These new positions were populated with men who had previously performed services for the colonial government (Rotberg, 1966). Amendments to DANO in 1924 and 1929 extended the powers of the Principal Headmen, enabling them, *inter alia*, to hear civil cases, collect taxes, issues licences and control afforestation.

Third, between 1933 and 1953, indirect rule was consolidated with the 1933 Native Authority and Native Courts Ordinances (NAO and NCO). This revised the hierarchy of traditional authority – now Native Authorities (NAs), Sub-NAs, Group Village Headmen (GVH) and Village Headmen (VH) – and gave the NAs powers of local government. Principal Headmen became NAs, though some efforts were made to install NAs with local legitimacy (Jentzsch, 2005). NAs could, *inter alia*, make rules and orders to regulate their own districts, adjudicate cases,³ and allocate ‘village gardens and pasturage’ (Vail and White, 1989). In practice, chiefs’ autonomy continued to be constrained by their lack of financial independence, the Governor’s powers of appointment, the Commissioner’s power of veto and ability to impose rules, which after a 1950 Amendment to the NAO no longer required the agreement of the NA (Mlia, 1975). Much of the ‘service ... taken over by the chiefs’ was still done in fact by the DCs (Rotberg, 1966: 50).

Finally, between 1953 and independence in 1964, statutory district councils were established as the unit of local government. Initially these consisted of appointed members, with District Commissioners as chairman, and were given limited authority to make by-laws and provide services (1953 Local Government (District Councils) Ordinance). Most of the chiefs’ powers were transferred to the councils, which they became *ex officio* members of and were formally subordinated to, though in practice they once again became an arm of the central executive (Chiweza, 2007).⁴ Fear that these would become bases of anti-colonialism rapidly led the councils to be stripped of their legislative powers in the 1954 Local Government Act for District Councils, which also gave the Minister of Local Government the power to establish and abolish councils and decide on membership. However, as the colonial authorities accepted that independence was approaching, political decentralisation and representative democracy were promoted. The 1961 Local Government Ordinance Amendment not only reintroduced statutory district councils but, for the first time, these were populated by members elected through universal adult suffrage and chaired by one of their number, with the DC relegated to an advisory role and chiefs continuing as *ex officio* members (Cross and Kutengule, 2001).

³ There had been traditional courts for lower customary cases, but now chiefs’ courts presided over by Native Authorities were formally recognised, and their powers were expanded beyond local African law and custom so that they could also hear cases of statutory and common law criminal offences. The DC supervised these courts, and a system of appeal to the magistrate courts and the court of the District Commissioner, existed (Jentzsch, 2005).

⁴ The institutional separation of NAs (reporting to central government) and district councils was formalised in the 1960 Local Government (District Councils) Amendment Ordinance, though Chiweza (2007) notes that in practice chiefs continued to work closely with the councils, both of which were appointed by and reported to government. As this was a period where the councils enjoyed a diversified revenue base (self-financing services, direct government grants and local taxes and rates), and service provision improved as a consequence, both chiefs and councils were perceived favourably by the rural population (Cross and Kutengule, 2001).

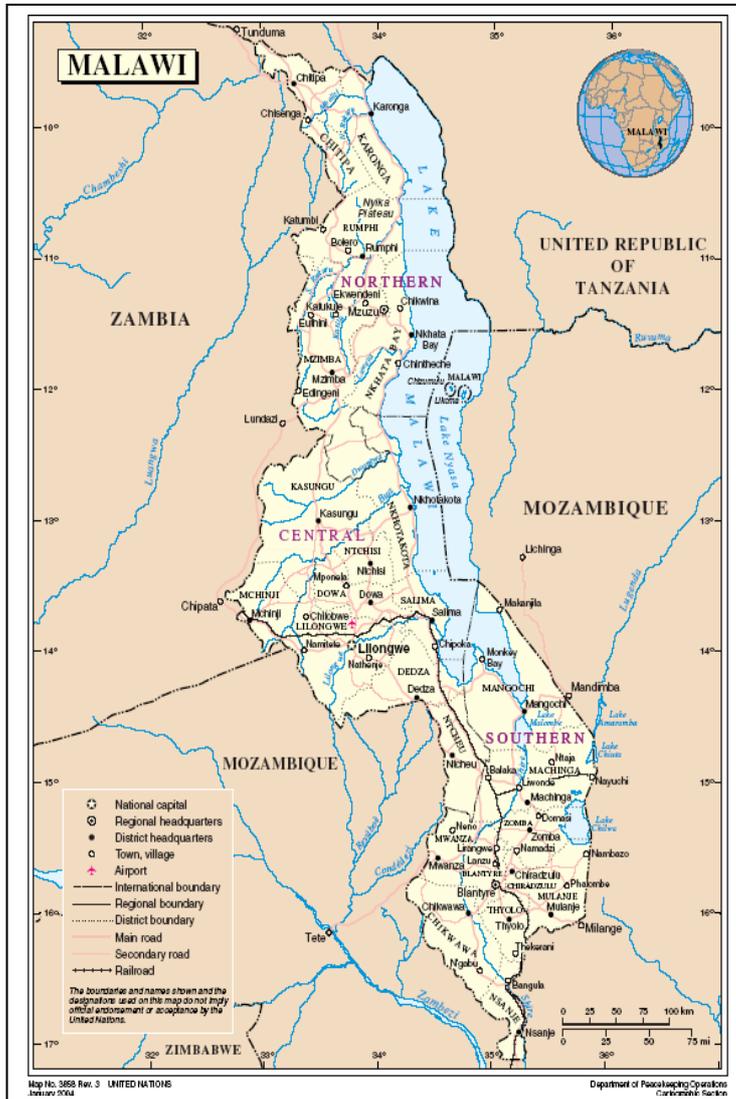
2.2 Overview of local governance since independence⁵

Dr Banda's one-party state

When Nyasaland was declared independent in July 1964, Prime Minister Dr H Kamuzu Banda, already 'life president' of the Malawi Congress Party (MCP), inherited an empowered and relatively well-funded local government system. Dr Banda, realising that a universal franchise would ensure Africans dominated the councils, had been instrumental in the local government reforms of the early 1960s.⁶ But his political strategy on becoming Prime

Minister and later President⁷ was to consolidate his and the MCP's control over the state and to neutralise opposition, through 'the centralisation of power in the office and person of the president; the encadrement of all local officials in a commandist structure, and the canalisation of revenue flows in a single stream' (Cross and Kutengule, 2001: 10).

In tightening control Dr Banda felt the need to subordinate the newly empowered local councils, and this was achieved through further amendments to the Local Governance (District Councils) Act in 1966 and *de facto* practice. He selected local councillors from a list of nominees, who were required to be MCP members, rather than their being directly elected, and in due course systematically



stripped the councils of human resources and financial powers. As significant for the distribution of local power, was the creation in 1967 of a parallel system of district development committees (DDCs).⁸ The committees were under the direct control of the

⁵ This section draws primarily on Chiweza (2007), Cross and Kutengule (2001) and Cammack et al. (2007). References for specific citations are noted in the text.

⁶ Influence achieved through MCP domination of the lower house of the National Legislative Council between 1960-4.

⁷ Malawi became a republic in 1966 and Banda became President; he was made Malawi's President-for-life in 1971.

⁸ 'The single party government introduced the District Development Committees in the early 70's. The DDCs were made up of party representatives of Central Government in the Districts and thus created a deconcentrated system that operated as a parallel structure "next to the Councils". In this

Office of the President and Cabinet (OPC), with the lower village-development and area-development committees (VDC and ADC) chaired by chiefs. Importantly, these were ‘all staffed by party cadres, with no community involvement in decision-making’ (Cross and Kutengule, 2001: 10). Financial resources were channelled away from the councils to the DDCs and ‘the attitude of DDC personnel to the councils and their assets [was]... one of plunder’ (Cross and Kutengule, 2001: 10). Alongside the DDC and the councils sat the district administration, working with the central ministries and headed by the DC. The DCs came back under the direct control of the OPC but, as long as they conformed to Dr Banda’s wishes, they had a large amount of local autonomy and discretion, much the same as they had in the colonial period.⁹ The DC took on an explicit development role as chairman of the DDC (Jentzsch, 2005), which ensured a direct line between the OPC and local development actors. Party officials dominated all local organisations and the Malawi Young Pioneers (MYP), the MCP’s youth wing, along with the party’s women’s league, under Mama Kadzamira’s leadership, ensured that communities were mobilised and orders enforced at village level.

The Banda period proved to be a double-edged sword for chiefs. On the one hand, the powers that chiefs had accrued during colonialism were seriously depleted. The closing stages of British rule had seen the removal of many of the chiefs’ powers¹⁰ and their transfer to the local councils, making them once again an arm of the executive. This position was reaffirmed in the 1967 Chiefs Act, which replaced the title Native Authority with that of Traditional Authority (TA) and established their areas of jurisdiction. Their legislative and judicial (in relation to statutory law) powers were curtailed and their roles as assistants to the DC and as custodians of culture, with responsibility for customary law, preservation of the peace and the development and welfare of their communities, were emphasised. In return, they received a monthly honorarium paid by the OPC. Importantly, whilst chieftaincy was hereditary, Dr Banda (like the colonial officials before him) assumed, and exercised, the power to appoint and remove TAs, as well as to create new chieftaincies. In addition, not only did Banda and the party formally curtail chiefs’ powers, but their customary functions and autonomy were also reshaped, restricted, and at times appropriated and politicised, particularly in relation to the Traditional Courts.

On the other hand, Dr Banda embraced the symbols of ‘tradition’ and the hierarchy of customary authority constructed under colonialism. By continuing the chiefs’ statutory status and by choosing to work through the development committees which they chaired, rather than through the councils, chieftaincy was further entrenched. The law was also ambiguous

era the Party was supreme and officials refused to pay the rates and fees which supported the Council political and administrative structure. It was apparent that the Party wanted to break the ties with the “colonialist” Councils and establish a system of district authority which was more closely tied to the government in power. Council grants were reduced, services were withdrawn and many council staff left the service. A process began in which all development project funding bypassed the councils and went directly to the District Development Committee.’ (Stanley et al., 2001). The District Development Committee structure comprises the VDC at the lowest level, followed by the ADC, and then the DDC at the highest level. As described below, this basic structure has been maintained for district development planning, despite moving through various permutations in the 1990s (District Focus for Rural Development Policy, District Development Planning System, etc.).

⁹ The continuity in management style was also aided by the slow Africanisation of the civil service in the 1960s and early 1970s. Of the 25 expatriates still serving in the Malawian civil service in 1972, 10 were District Commissioners, many serving in districts with ‘security’ problems or a large expatriate population.

¹⁰ Chiefs’ powers were again reduced when the 1962 Local Courts Ordinance removed their judicial powers (Chiweza, 2007). This was part of larger and long-term authoritarian trend, and appointments to the local courts, which replaced the chiefs’ courts, were said to be ‘political and the members (were) inexperienced and incompetent’. In 1963 the colonial Governor said he ‘did not believe that an independent judiciary could survive’, a prophecy that proved correct (Baker, 2001).

regarding the precise nature of the chiefs' roles, which worked in their favour. And, because reference to tradition and custom was used to secure compliance at local level and to legitimise the President, chiefs were indispensable to the state as the final link in the chain reaching from Dr Banda down to the local population. Whilst incorporated into state structures, chiefs also 'managed to negotiate sufficient space to retain their legitimacy with the people' as a result of 'inbuilt mechanisms for voicing and channelling local demands and needs based on strict traditional royalty and socio-cultural affinities and defined role of the subjects' and 'their continuing economic role in controlling land allocations, and their role in ritual offices such as burial [which] proved to be resilient' (Cross and Kutengule, 2001: 11, citing Maliro, 2001).

Era of multiparty democracy

In a 1993 referendum, mandated by Dr Banda, Malawians voted for multiparty politics and the following year peaceful, transitional elections took place. Bakili Muluzi won the presidency whilst his UDF party formed alternating coalitions with opposition parties in an attempt to gain a majority in the National Assembly. A new Constitution reflected liberal democratic norms and included a progressive bill of rights. It also provided for the establishment of local government authorities that would be 'responsible for the representation of the people ... for their welfare, and ... for the promotion of infrastructural and economic development ... consolidation and promotion of local democratic institutions and democratic participation' (GoM, 1994). Soon after coming to power the Muluzi government abolished Dr Banda's local councils and, with the donors, set about designing a new decentralised governance system. The process was drawn out, and local council elections were delayed until 2000; this suited the President and the UDF, which feared that the MCP (which was still powerful in parts of the country) would win local council elections if held, thus giving it an alternative power base.

A review of local governance published in 1998 recommended that rural and urban administration, financial responsibility, and political authority be devolved to the district level and that government agencies at the district and local level be integrated into structures headed by 'Assemblies'. Consequently, the Local Government Act of 1998 (and Malawi Decentralisation Policy 2000) established District and Town/City Assemblies as the unit of local government, incorporating and subordinating the local administration. Local councillors were elected in 2000 and Assemblies formed. Secretariats led by DCs in districts and Chief Executive Officers (CEO) in towns and cities and comprised of departmental heads (i.e. the members of the District Executive Committees) were mandated to provide technical and executive support to the Assemblies, including undertaking day-to-day executive and administrative functions, supervising Assembly departments and staff and implementing Assembly resolutions (Local Government Act, 1998, Section 11).

By law an Assembly is to be made up of elected local councillors, who can choose a Chairperson (known as a Mayor in City and Municipal Assemblies), and of *ex officio* members, including chiefs (TAs and sub-TAs),¹¹ MPs and 5 special interest representatives (e.g., entrepreneurs and NGO representatives). It is given executive and legislative powers (e.g. to undertake planning and pass bylaws) in defined areas (including development planning, health and education, transport and public works, land and planning, agriculture, water, natural resources finance and security). Decision-making within an Assembly is to be conducted through its committees, to which *ex officio* members can be co-opted. Control of

¹¹ Often making TAs the biggest non-voting bloc in the Assembly. For instance, Nkhata Bay District Assembly had 22 elected councillors and 23 non-voting members, including 13 TAs/sub-TAs, 6 MPs and 5 special interests representatives (CLGF, n.d.).

some human¹² and financial¹³ resources was also transferred to the Assemblies. Though most decentralised functions are mandatory under the Act, in practice there was to be a phased devolution of authority to local government from 2000, beginning with primary education and health, forestry, natural resources and community services (CLGF, n.d.) As of 2009, however, political decentralisation is defunct and administrative decentralisation is incomplete, as civil servants in the districts are still paid by central government and can be moved without a DC's approval, and fiscal responsibility (earning and spending at local level) is not fully devolved to the executives of towns and districts (Nguluwe, 25 March 2009).

Within a few years, the lack of resources, the ineffectiveness of local councillors because of their low education levels and poor training, the emergence of local elites who dominated decision making and resources, the passivity of villagers, the slow deconcentration of power and funds by ministries to district level, inadequate coordination mechanisms and consequent fragmented implementation, poor monitoring and evaluation systems, and tensions between various local actors (councillors, DCs, MPs and chiefs) were identified as problems preventing the implementation of the decentralisation programme (Cammack et al, 2007). But the Assemblies' weaknesses are also part of a wider inability to consolidate democracy and of a general de-professionalisation of the civil service under President Muluzi.

Alongside and beneath the Assemblies were DDCs, which had been reformed in the 1993 'District Focus for Rural Development' policy. This sought to strengthen the development committees and provide them with funds in order to become the motors of rural development and local democratic participation. This led to a number of formal changes, including to DDC membership (e.g., to make them more representative), funding (District Development Funds were established to finance projects identified by the people) and structure (district development offices were established to facilitate planning).

As Cross and Kutengule (2001) note, however, 'there were two key weaknesses in this programme. It essentially continued the dual system of administration through favouring the DC [and CEO] and the DDC as the vehicles, with their history of favouring powerful sectoral ministries and the top-down approach, and involved little more than a certain amount of deconcentration of functions'. Local participation and popular control therefore remained weak as the DDCs turned out to be further 'mechanisms of regulation' by central government, in keeping with the dominant, century-long trend of the national executive maintaining control of local power and resources whilst giving the appearance that devolution was underway. Whilst the DDCs were formally subordinated to the Assemblies after 2000, the Assemblies' weaknesses and subsequent *de facto* reliance on the CEOs and Secretariats, as well as the continuing dominance of the state executive, meant that, in practice, the impetus for political centralisation was not seriously disturbed. This trend was strengthened yet again

¹² A 2001 Amendment to the Local Government Act transferred responsibility for recruitment of senior management staff, including the CEO/DC, departmental directors and finance officers, to the Local Administration Service Committee, supposedly an interim measure (*ibid.*).

¹³ This includes the authority to raise revenue through taxes and the responsibility to pay chiefs' honoraria. Central government has a constitutional responsibility to 'ensure that there is adequate provision of resources necessary for the proper exercise of local government functions' (GoM, 1994). Assembly revenue should come from central government non-taxable payments (e.g. from revenues that central government continues to collect and are redistributed to Assemblies based on a formula) and grants (e.g. the General Resource Fund, which also covers *inter alia* sector grants, salary subsidiaries and chiefs' honoraria, and the District Development Fund), property rates and rents, and fees and other charges. Assistance from donors should reach local government through the Ministry of Finance. Assemblies are required to submit annual estimates of revenue and expenditure to the Local Government Finance Committee for approval and no expenditure can be incurred that is not in the estimates (*ibid.*). In practice, district systems are known to be weak (OECD, 2008), though informants report progress has been made in devolving budgeting and spending.

when local councillor elections were postponed in 2005 (but are supposedly scheduled for 2010).

Malawi's traditional chiefs have suffered some serious blows to their powers since 1994 (Chiweza, 2007). The abolition of the old Traditional Courts soon after the transition and the proposed new Land Act (which is likely to ratify the 2002 National Land Policy) are the most significant because justice and land are at the heart of the chiefs' customary power.¹⁴ For instance, one chief in town noted that he felt threatened by local government, which is 'taking little-by-little our power', and by those urbanites who bypass him on legal and land affairs (Mwamyango, 19 March 2009). The introduction of local councillors also challenged the chiefs' position as representatives of, and gatekeepers to, the local population and as links to the DC's office.¹⁵ The fact that chiefs were only *ex officio* members of the Assemblies, and often restricted to being simply advisors to their local development committees, also diminished them.¹⁶

Liberalisation and urbanisation have been accompanied by a decline in respect for 'traditional' values, including chiefs' customary authority (NDI, 1995; Jentsch, 2005; Poeschke and Chirwa, 1998) and not surprisingly, chiefs frequently complain that 'freedom' and democracy have undermined people's respect for them since the transition.

Finally, the Ministry of Local Government has decreed repeatedly (1997, 2003, 2007) that TAs cannot simply create villages and VHS without meeting certain requirements – villages must have 50 people over the age of 17 for instance, and TAs must involve government in the chief-creation process. This is often ignored for, as one senior chief (Chikulamyemba, 23 March 2009) explained, creating villages and VHS is not simply an issue of earning money (for many of these VHS are not recognised or paid by government), but it is a matter of chiefs' traditional authority being maintained.¹⁷

On the other hand chiefs have been able to regain some ground at sub-national level. Several factors explain this. Chiefs continue to have *de jure* recognition through the 1967 Chiefs Act and, implicitly or explicitly, other legislation relating to customary law. The removal of MCP and MYP officials¹⁸ has meant that the chiefs have regained more autonomy¹⁹ at local level

¹⁴ That said, the threats to chiefly powers are largely hypothetical since the new land policy is only being implemented slowly and in part. More important for chiefs is the inability to hand out plots because so little new land is available, and the tendency by residents to 'shop' for justice by attending chiefly or magistrates courts depending on the judgment they think they will receive.

¹⁵ Overall in the South and Central regions, chiefs were not particularly supportive of local councillors but in the North they said they thought councillors had been 'bridges' between TAs and government during 2000-05, and that they could access funds for development easier when Assemblies existed. Interestingly, this regional difference was also reflected in the views of District officials, with those in the South more often arguing that they were better able to get on with technical business without local councillors, whereas those in the north more often arguing that councillors were necessary for strengthening oversight and local participation.

¹⁶ Chiefs in rural districts are generally heads of the village/area development committees though.

¹⁷ District officials argue on the other hand that VHS and villages may be created by TAs to obtain 'advantages' such as increasing villagers' chances of receiving 'handouts', fertiliser coupons (see below) and NGO support. Some claim that new VHS are 'imposed' by TAs who are bribed by people wanting to be appointed to the post of VH, and that villages are created by TA when disputes split villages (Mwandira and Nyirenda, 23 March 2009). Politicians are also blamed, for they may support the creation of new villages to curry favour with voters (Gondwe, 24 March 2009).

¹⁸ Chiefs now have community police reporting to them and the police, and work with local political party officials rather than being dominated by them.. A tension still exists though (see Cammack et al, 2007).

¹⁹ Local officials of the various political parties do play a role currently, but the transition reduced their coercive powers.

(Jentzsch, 2005), which was not seriously impeded by the District Assemblies when they existed between 2000-05. In fact, their role as *ex officio* members of the Assemblies, the weakness of the local councillors, the continuing reliance on the DDCs²⁰ and the *de jure* ambiguity about the division of responsibilities between local councillors and chiefs, have all contributed to a *de facto* gain in power and importance (Chiweza, 2007). The crisis in local governance that has occurred since 2005, and the political and administrative vacuum this creates, has increased the importance of the functions that chiefs perform for both their subjects and the state. That there are many more chiefs now who are not formally recognised by government may also be a result in part of this vacuum and the desire to have local leaders. Finally, the ability of chiefs to mobilise votes means that they have gained significance in the multiparty era.

2.3 Urban governance

Urbanisation trends

Malawi has been slow to urbanise²¹ but, in mid-2004, the UN Centre for Human Settlement (UN Habitat) reported that Malawi was 'the fastest urbanising country in the world with an urban population growth of 6.3 percent, compared to 0.5 percent in rural areas'. UN Habitat now puts the urbanisation rate at 5.2% per annum – the fifth highest in Africa, behind four post-conflict states²² – and reports that 1.8m people live in Malawi's urban areas.²³ It predicts that by 2010, 3m will live in town and by 2015, 5m or over 40% of the population. That number is expected to grow to 15.5m by 2050.

Urban areas in Malawi fall into three legal categories. The first consists of land that is formally declared to be a city or municipality. The power to make such declaration is discretionary and is vested in the President by the Town and Country Planning Act. In 2004 about three-quarters of Malawi's urban population were residing in the three cities of Blantyre, Lilongwe and Mzuzu and the municipality of Zomba (*Daily Times*, 2 Oct 2008; Phiri, 2004).²⁴ The second category of urban areas consists of areas that are formally declared to be towns by the Minister of Local Government and Rural Development in exercise of powers under the Act. There are eight such towns: Lunzu, Balaka, Kasungu, Karonga, Luchenza, Liwonde, Mangochi and Salima. The third category consists of areas that have not been formally declared to be cities, municipalities or towns but display urban characteristics such as the application of plans that lay out land-use zones and outline future infrastructural developments. Some of these are 'growth centres' under 'integrated rural development' planning.

Soaring rates of urbanisation are the result of high fertility rates (4.2%) and flight from rural poverty, which has generally been worse than in the cities (Munthali, 2006). This poverty is caused by environmental degradation (soil erosion, deforestation, etc), backward agricultural technologies, shrinking farm sizes, and a paucity of off-farm employment opportunities. Global economic patterns and domestic agricultural and land policies undermine rural livelihoods as well (Adams, 2004; Cammack, 2001). Towns offer villagers a chance of finding steadier work and making money to invest in their rural homes (*mudzi*).

²⁰ Which chiefs still tend to chair, despite the Decentralisation Policy (2000) preventing them from chairing VDCs and recommending that they do not chair ADCs.

²¹ 'Ninety five per cent of Malawi's population lived in rural areas at independence in 1964; the urban population increased from 200,000 to 879,000 between 1966 and 1987, representing only five and eleven per cent of the total population, respectively' (Englund, 2002).

²² In 2007 it put the figure at 4.8% when Malawi was placed seventh in African urbanisation tables.

²³ Figures for town population sizes are difficult to obtain, and vary considerably. Adams (2004) states that 'In twenty years, Lilongwe has grown from some 75,000 to an estimated 643,000'.

²⁴ Compare with 1987, when 11% of Malawi's population of 8m lived in the urban areas: 39% lived in Blantyre City, 20% in Lilongwe City, 5% in each of Mzuzu and Zomba (Kawonga, 1999).

Indeed, migration is a normal part of any country's development and is a common family coping strategy; in the case of Malawi 'mobility is best seen as a lifestyle in which improvements in the village are pursued through a 'stay in town' (Englund, 2002). That residents in Chinsapo, a settlement on the outskirts of Lilongwe, do not think of themselves as having 'left' their rural homes (thus making Englund's questions about their 'return' nonsensical to them) is logical both economically (as most cultivate land in their home villages) and socially. Many urbanites are 'translocal': their plans and lives include both the city and village. Ideally only death sees them returning to their villages for good (Englund, 2002). The fact that few urban residents are born and raised locally, and that most shift regularly between towns and villages, means that urbanites share many of the beliefs and norms of their rural relatives.

Table 1: Malawi urban population estimates

Year	% of total population living in urban areas	Population
1964	5	200,000
1966		260,000
1987	11	879,000
2008	14	1,800,000
2010		3,000,000

Poverty levels vary from place to place, with some two-thirds of Blantyre's residents living below the poverty line compared to less than one-half in Lilongwe (Munthali, 2002). In recent years conditions in town have deteriorated. Though informal settlements grew up in Dr Banda's era, 'perhaps the most significant factor underlying the growth of squatter settlements in Malawi was the democratic transition in the early part of [the 1990s]. It introduced "freedom" (*ufulu*) as a value in everyday life, dispelling fears of eviction from "illegal" settlements' (Englund, 2002).²⁵ Slums are currently growing at a rate of 4% per annum, only slightly less than urban areas generally. These are expanding and

becoming the 'locus of poverty' and underdevelopment²⁶ because of 'inappropriate or nonexistent policy responses; poor access to basic urban services including land and housing; weak local economies to generate jobs; weak local government capacity; [and] a reluctance to acknowledge the permanence of informal settlements prevents effective management of this issue'. (Chome, 27 June 1007)

Whilst people in peri-urban areas aspire 'to live; to grow food to eat and to sell; to keep chickens and goats and to provide grazing for sheep and cattle' (Adams, 2004), overcrowding means that many must survive without gardens or animals, and instead operate small businesses, do piecework, or take waged employment.²⁷ Indeed, at least three-quarters of Malawi's urban dwellers live in 'squalid unplanned settlements'. These are poorly served in terms of water, housing, sanitation, roads, energy, health, education, jobs, transport and food supplies (PANA, 7 Aug 2004, *Daily Times*, 2 Oct 2008 citing UN Habitat; Munthali, 2006).

²⁵ Blantyre grew by 50% between 1987 and 1998, for instance (Munthali, 2006).

²⁶ For instance, intestinal helminth infections among children aged 3-14 years is 4 times more likely in urban than rural communities (16% v 4%). Risk increases for children who are barefooted, don't go to school, live nearby stagnant pools of water and have young, under-educated mothers (Phiri, Sept 2001).

²⁷ For instance, in Ndirande, some 80% of men and 73% of women ran businesses whilst the rest did farm labour (*ganyu*) or had jobs, where in Mbayani 40% of men and 32% of women ran businesses, and 26% of men did *ganyu* or had jobs, and almost two-thirds of women were housewives (see Munthali, 2006).

Table 2: Population of principal towns ('000s)

Urban	1977	1987	1998	2003 (est)
<i>Blantyre</i>	219	333	478	547
<i>Lilongwe</i>	99	223	436	499
<i>Mzuzu</i>	16	44	87	100
<i>Zomba</i>	24	43	64	na

Source: OPM (2004) cited in Kayuni, et al. (2005)

Local urban planners lament the weakness of policies and their implementation. For instance, they describe towns and cities where:

- Most of the open-spaces, and road reserves are encroached on for low income housing, small-scale industries, etc.;
- Vendors mushroom in city centres, encroaching on road reserves, open spaces, shop fronts and parking spaces;
- Buildings are altered without planning permission, e.g. homes are changed to commercial ventures (such as lodges, clinics, garages, saloons, etc.);
- Planning and development regulations/rules are contravened and any effort to enforce them meets with stiff political pressure;
- Minibuses congest city centres, compete for parking lots and obstruct free traffic flows, etc (Kawonga, 1999).

From the residents' point of view, other problems include:

- Lack of privacy as 'houses are constructed with no order';
- Lack of security of tenure and insufficient freehold land;
- No compensation for demolition of houses;
- Poor security (no streetlights and little policing);
- Food insecurity and lack of services; and
- Politicisation of community development committees ('General Problems', n.d.).

Policies have been devised by central government to manage urbanisation more effectively and to deliver to populations the governance, infrastructure and services required.²⁸ Each formally designated town and city is to prepare its own three-year development plan, which outlines *inter alia*, spatial and developmental objectives, the area's gaps and needs, and a vision and strategy to address these (e.g., Zomba Municipal Assembly, 2007; Blantyre City Assembly, 2000). Similarly, 'urban structure plans' are also written in urban areas not designated as towns (e.g., Nkhata Bay). However, city and town authorities have been unable to meet citizens' needs because of the authorities' lack of capacity, coordination and funding, and reportedly, because of insufficient mechanisms to ensure community participation.²⁹ As described below, exacerbating the problem is the absence of formal Assemblies and the decline in funding (including from donors) that has followed. Jurisdictional confusion in urban areas (between the Ministry of Lands, city/town land departments, the Malawi Housing

²⁸ These include the Statement of Development Policies (1987-96), Vision 2020, the Malawi Poverty Reduction Strategy, the Malawi Growth and Development Strategy (2006), the Local Government Act (1998), the National Decentralisation Policy (2000), the Town and Country Planning Act (1988), the National Land Policy (2002) and the National Physical Development Plan (1987).

²⁹ The planners in Blantyre acknowledge problems that undermine the city's capacity to implement its plan: high levels of poverty due to lack of jobs, low levels of 'institutional capacity at the City Assembly', insufficient funds, proliferation of unplanned settlement due to weak enforcement of plans, poor communication between the Assembly and population, weak coordination of service providers, poor enforcement of legislation and bylaws, and poor maintenance of social facilities (Blantyre City Assembly, 2000, Vol 3, Ch 1; also 'General Problems', n.d.)

Corporation, sometimes the Ministry of Agriculture, and oftentimes chiefs) also encourages unplanned settlement and unlicensed building. It is no surprise, then, that UN Habitat calls for additional measures to be taken to address what it says is Malawi's 'Tsunami [that] no one is rushing to correct ... because it is silent' (*The Nation*, 2 Oct 2008).

Contemporary urban governance structures

Within Malawi's three administrative regions – Northern, Central and Southern – there are 27 districts, each with a District Assembly. Towns and cities that have been demarcated are designated as districts in their own right and in law (though not in practice since 2005) and have their own Assemblies (CLGF, n.d.). Malawi has 4 City Assemblies (Blantyre, Lilongwe, Mzuzu and Zomba), and 8 Town Assemblies (Balaka, Dedza, Karonga, Kasungu, Liwonde, Luchenza, Mangochi and Salima), in addition to 27 District Assemblies, making a total of 39 Assemblies (see Annex 2). Land around government offices (the Boma) is also declared public and outside the control of chiefs, even where formal towns do not exist, as in Rumphu and Nkhata Bay districts.

All local authorities are governed by the Local Government Act (1998), which does not distinguish between urban and rural Assemblies and their responsibilities (CLGF, n.d.). Thus all Assemblies have similar structures, as described in Section 2.2 above. The differences that do exist in the organisation of urban and rural Assemblies are not significant (e.g. the chair of the Assembly may be called a Mayor in cities; Village Development Committees are called Ward Development Committees,³⁰ etc.) or arise from legislation that has provisions relating specifically to rural or urban areas (e.g. Town and Country Planning Act, Land Act, etc.).

As noted previously, Assemblies were dissolved in 2005 and local government elections have not been held. President Mutharika maintains that this is because of the poor performance of previous local councillors, the cost of holding local government elections, and the confusion that having a third ballot would present to voters if they were held during the May 2009 presidential and National Assembly elections. Observers suspect that, like Mr Muluzi before him, Dr Mutharika fears that opposition parties could capture local government and pose a threat to the ruling party. Assemblies of a sort – which the MLGRD has directed should be called 'Consultative Committees' – continue to sit with only *ex officio* members participating (TAs, MPs, special interest representatives). Without local elections or councillors, however, these 'assemblies' (as they are still called) have no legal basis and are unable to make bylaws, including those relating to local revenue (e.g. raising taxes and rates).³¹ In practice, the lack of funds for sitting expenses means that assembly sessions take place infrequently, and the Secretariats effectively run district, city and town affairs. The Secretariats handle public and politicians' requests for assistance, gather fees (e.g., from markets and city buildings), receive and spend central government funds, organise development projects (road building, street cleaning etc) and oversee development planning. This means that there has been a *de facto* recentralisation of authority and accountability to the executive through the CEO/DC (see Cammack et al, 2007). Donors have reduced their contribution of funds to local government since the postponement of local government elections, which further weakens local service delivery, while inflation since 2005 has reduced the value of static rates, which is problematic given the inability of 'assemblies' to raise their rates without local councillors.

³⁰ Local councillor's wards and the area covered by the Ward Development Committees (still based on the DDC system) are not the same (CLGF, n.d.).

³¹ Apparently a case was taken by a businessman whose property was confiscated by a district 'assembly' for non-payment of rates, and he won his case in court because these consultative bodies haven't the authority to act as they previously did when councillors sat (Mwandira and Nyirenda, 23 March 2009). One Secretariat reported that besides not being able to pass by-laws or raise rates without a formal Assembly, it is not supposed to layout new townships, but that 'with the help of the Ministry and cabinet there are ways around this restriction'.

In some towns (e.g., Balaka and Dedza) the Secretariats reportedly work through ‘ward’ and ‘neighbourhood’ committees to undertake development planning and to provide services (Nhlane, 30 Sept 2008; Pangenji et al, 2 Oct 2008). It varies whether these are part of a truncated structure left over from decentralisation (as wards were under the DDCs) or are remnants of local councillors’ wards. More importantly, it is not certain that these ‘wards’ and ‘neighbourhood committees’ actually exist on the ground. Other Secretariats have not attempted to recreate formal structures but work through stakeholders, such as business groups. In Zomba the Secretariat was trying to recruit the help of ex-Local Councillors for development planning (Jimu, 14 Oct 2008) though it also works with some ‘town chiefs’ (TCs). In rural districts VDCs and ADCs continue to operate at varying levels of effectiveness and they channel their development priorities to district ‘assemblies’, though these may not take the locals’ expressed needs much into account when planning (e.g., Mbale and Zgambo, 23 March 2009; Nguluwe, 24 March 2009).

MPs have power in their constituencies, which overlap with government authorities’ and traditional chiefs’ jurisdictions. They are increasingly involved in local development through the Constituency Development Fund which each MP receives from central government, now amounting to MK5m annually (Tembo, 23 Sept 2008). MLGRD guidelines determine how the CDF can be spent and district DCs and town CEOs are meant to oversee the use of these funds, along with other central government incomes (Cammack, et al, 2007). But in the absence of Local Councillors and Assemblies, there are no onsite watchdogs and central auditing of funds, including CDF spending, has reportedly been lax (Tembo, 23 Sept 2008). Where MPs are not sitting (due to death and no by-election) locals lament the absence of CDF funds for development (Mbale and Zgambo, 23 March 2009). How politicised the use of Constituency Development Funds has become since their inception a couple of years ago requires additional research, though it is clear from our interviews that some is spent on political ‘agendas’ rather than development.

Finally, chiefs are important actors within towns. ‘Town chiefs’ are discussed in detail in Section 3, but it is useful to note here that there are different types: some are hereditary chiefs who are formally recognised as such under the Chiefs Act (i.e., they are paid an honorarium by government), others claim to be hereditary chiefs but their chieftaincy is not formally recognised by government; and still others are not part of a chieftaincy lineage and have become town chiefs through appointment by a TA or through an ‘informal’ community (s)election at the behest of a TA, a party, the Secretariat or other local authority.

The first kind – Traditional Authorities and their subordinate chiefs – are those that are given *de jure* status in the Chiefs Act (1967).³² The Chiefs Act establishes that chieftaincies are hereditary and hierarchical. The highest level is either the Paramount Chief (PC) or, for those groups without a PC, the Traditional Authority (TA).³³ The President can also elevate a TA to Senior TA, a position that has no historical equivalent. There are many TAs within each ethno-linguistic group and they cover all parts of the country. Below each TA are Sub-TAs (STAs), Group Village Headmen, and Village Headmen. All villages have a VH, who takes the name of the village on assuming the chieftaincy, and several villages will be grouped under one GVH (NDI, 1995). The Chiefs Act recognises GVH and VH but only PC, TA and Sub-TA are given the title Chief under the Chiefs Act. Colloquially, however, Malawians refer to all of these leaders as chiefs. All chiefs have a group of counsellors

³² As described in Section 2.2, the Chiefs Act adopts the hierarchy established by the Native Authority Ordinance in 1933. Formal law takes a limited non-interventionist view of chiefs, i.e. there is little statutory restriction of the power and authority of chiefs. Where the law creates new institutions, it does so mostly in parallel, rather than in substitution of, customary institutions. The relationship between the parallel regimes may be conflictual or complementary and require further study.

³³ Not having a PC historically does not mean an ethnic group has not one now. Recently, for instance, President Mutharika appointed a Lomwe PC.

(*nduna*), usually relatives or acquaintances, to advise him/her (Kayambazinthu, 2000), whilst chiefly families have a role to play in selecting or censuring their own chiefs. Clans and families will have *nkhoswe*, sorority groups who settle family matters and, in so doing, will interact with chiefs.

Although chiefs are hereditary, with senior members of the leading lineage choosing new chiefs, the Chiefs Act gives the OPC power to approve (or decline) new chiefs and to create new chieftaincies and Senior TAs. Currently, there are seven Paramount Chiefs in Malawi – Inkosi ya Makosi M'Mbelwa of the Northern Ngoni, Inkosi ya Makosi Gomani of the Southern Ngoni, Chief Lundu of the Mang'anja, the recently created (in October 2008) Chief Mkhumba of the Lomwe and Chief Chikowi of the Yao (from March 2009), as well as the Ngonde (Kyungu) and Tumbuka (Chikulamayembe) Paramount chiefs created/promoted from TA in 2007. (The Chewa/Nyanja Paramount Gawa Undi is based in Zambia). According to the Ministry of Local Government (9 March 2009) there are more than eighteen thousand villages and VHs, nearly 2400 GVHs, 61 Sub-TAs, 171 TAs, and 28 senior chiefs besides (MLGRD, 9 March 2009).

There are many more villages and VHs than this if the situation in Rumphi is anything to go by, for in that district the authorities report over twice as many villages in existence (1648) than officially recognised (730) (Mwandira and Nyirenda, 23 March 2009). In Nkhata Bay we were told that there are 254 villages in the district on the register and maybe another hundred unrecognised villages (and VHs) (Nguluwe, 25 March 2009).

The Chiefs Act (1967: Section 7) establishes the role of chiefs as:

- to preserve the public peace;
- to carry out the traditional functions of his office under customary law in so far as the discharge of such functions is not contrary to the Constitution or any written law and is not repugnant to natural justice or morality;
- to assist in the collection of tax;
- to assist in the general administration of the District in which his area of jurisdiction is situated and for such purpose to carry out such functions as the District Commissioner may require; and
- to carry out and enforce any lawful directions of the District Commissioner.³⁴

These continue to be chiefs' main functions, though they themselves also emphasise the importance of their judicial functions (adjudication of minor disputes) in the maintenance of law order and their promotion of development and well-being within their communities (NDI, 1995). The Ministry of Local Government and Rural Development (MLGRD) also highlight their roles in 'spearheading development' and assisting government to 'put down evil practices like corruption'(Lende, 9 March 2008).³⁵ In return chiefs receive a monthly honorarium.³⁶

³⁴ Chiweza argues that this is outdated since the Local Government Act (1998) merged the DC office with the local authority, which makes chiefs subordinate to local government rather than the OPC. Nonetheless, the President continues to take an interest in chiefs' affairs and, as described, there has in any case been a *de facto* recentralisation of local government since 2005.

³⁵ Secretary for Local Government memo dated 4 Sept 2007 also states that chiefs should be 'development conscious and have a hard working spirit', 'be talented in conflict resolution skills', 'should maintain a register of his/her subjects' and be literate.

³⁶ A Paramount receives K50,000, and a Senior TA K30,000 (which is taxed, reducing it to a take-home income of K24,500/mo) (Mazengera, 24 Sept 2008; Lende, 9 March 2009). A sub-TA receives K18,000, a GVH K5000 and a VH, K2500 (Ndelemani, 15 Oct 2008). GB£ 1 = K240, in Oct 2008. The total bill adds up to over K6m/month or nearly £3.5m/annually.

Whilst chiefs have established and recognised authority in rural areas, their position in urban areas is much more ambiguous. As described below, TAs residing outside towns regularly interact with town chiefs within urban and peri-urban areas. Further, there are some GVHs or VHs within town boundaries who receive honoraria, though the Chiefs Act (Section 3(5)) explicitly states that PCs, TAs and STAs have no jurisdiction in urban areas.³⁷

Legislation enacted since the Chiefs Act challenges the view that TAs have no legal authority in towns. Firstly, the 1994 Constitution recognises customary law as binding and chiefs retain their authority over their subordinates by virtue of customary law. Secondly, under the Local Government Act (1998), TAs and STAs sit on Assemblies, including Town/City Assemblies, as advisory members.

Thirdly, the Town and Country Planning Act (1991) establishes that, once a Planning Area is declared, chiefs retain the power to allocate customary land but that any person allocated such land has to apply for planning permission if s/he wishes to develop it.³⁸ But the declaration of a planning area does not in itself change the legal status of land or the extant customary relations of authority over it, though this is widely assumed to be the case.³⁹ Given urbanisation trends, more clarity is urgently needed.⁴⁰

Annex 3 provides an overview of chiefs *de jure* and *de facto* authority and roles. To facilitate comparison, this is organised according to the six sets of functions that are fulfilled by town chiefs as discussed below.

3 Town Chiefs in practice

This section outlines the findings that emerge from our fieldwork. Though we have found mention of TCs in various reports, we have been unable to discover any study that surveys them in depth. Thus some basic characteristics of TCs are presented here, as well as information about their functions, authority, legitimacy and accountability. We also speculate about how they fit within the APPP research framework – as hybrid political modes that produce a number of public goods. Alluded to briefly here is the uncertainty that remains regarding a number of key features of TCs, which will be addressed in the next three years.

³⁷ Though interestingly it is silent on the authority of GVH and VHs within urban areas.

³⁸ A land expert agreed that a TA's land remains customary land even though it's in the city, but when the town planning and survey departments start to work on the ground, this 'practically' ends the chief's jurisdiction and he will ask for compensation (Khalia 10 March 2009).

³⁹ For instance, an OPC staff member told us that 'from a legal point of view there are not chiefs in town' (Sikwese, 25 Sept 2008). At the MLGRD (Lende, 9 March 2009) we heard that 'land in town is not customary land and so there cannot be town chiefs'. With regard to chiefs and the land, the *Zomba Urban Profile* (2007) states that 'Legally and according to the Land Act and Town and Country Planning Act, there ... is no customary land within the Municipality. However, common practice shows that around 30 percent of the land in the Municipality is held and administered by local chiefs ... This situation emanates from the lack of capacity of the Assembly for upfront planning and provision of social and infrastructure services before any development activities take place'. Interviews with central government and Secretariat staff indicate a widely held belief that the Town and Country Planning Act extinguishes chiefs' authority over land in designated areas.

⁴⁰ A famous case in Blantyre near the airport – where TA Machinjiri has lands within the city boundary – has prompted the realisation within the MLGRD that it 'needs to look into these sorts of cases' where traditional chiefs have been absorbed in cities (Lende, 9 March 2009).

3.1 Introduction

Methodology

Due to time limitations – in two trips we had 7 weeks to spend in the field – we aimed to survey as many as fifteen towns in the three regions and to look more closely at town chieftaincies in the Zomba area (southern region). The survey was intended to gather data quickly on three topics – the number of town chiefs in towns, their characteristics, and their interaction with officialdom and traditional authorities. The second part of the work, in Zomba, was meant to look more closely at the TCs’ characteristics, their interaction with communities, and their production of public goods.

We interviewed a variety of key informants to gather this information, sometimes several at once (see Annex 4). These included officials from state ministries and the OPC, town CEOs and other ministry and Secretariat officials, District Commissioners, Members of Parliament and candidates, traditional chiefs of various ranks, donor and NGO staff, several types of town chiefs, academics, researchers, and community members.

Areas surveyed

Data were collected on the following areas during the field research:

Town/area	Informants	Town/area	Informants
<i>Lilongwe & rural</i>	TCs, MP, TA, Ministry officials, Assembly officials	Zomba	Assembly officials, town chiefs, academics and community members
<i>Dowa</i>	Assembly officials, NGO staff, TCs, TA	Mponela	TC (met in Dowa)
<i>Ntchisi</i>	Assembly officials	Mzuzu	TCs, Assembly officials
<i>Kasungu</i>	Assembly officials, TC	Rumphi (& Bolero)	Paramount chief, GVHs, Assembly officials
<i>Dedza</i>	Assembly officials, NGO staff	Mzimba	MP (met in Lilongwe), TCs, Assembly officials
<i>Balaka & rural</i>	Assembly officials, TA and TC, NGO staff	Nkhata Bay & rural	DC and TA
<i>Blantyre</i>	Town Assembly, and 1 chief	Karonga & rural	Assembly officials, Paramount chief and TAs in town, NGO staff

3.2 Town chiefs: basic features

Town chief is the term used locally to include a wide range of local leaders, often called (*m)fumu* (chief) by the local, urban population. They are quite varied, but have some core similarities. Their status, characteristics, functions, outputs, effectiveness, authority and legitimacy, their motivations and interaction with other local governance modes are detailed here.

Titles

Local leaders in urban areas, who are not associated with the formal political system (as MPs or Local Councillors)⁴¹ or the local administration (the Secretariat or DC's office), are called by a variety of names: 'town chiefs', 'captains', 'capitao', 'block leaders', 'block-heads', 'local leaders', 'group village headmen' or 'village headmen'. One man in Blantyre called *mfumu* by his neighbours referred to himself as the 'eyes and ears' of the GVH, whilst another in Mzuzu noted that the TA in Nkhata Bay wanted 'eyes and ears to be nearer' to his people in the highlands to gather information. Another called himself a 'senior Group Village Headman' – a title that has no traditional or formal equivalent. In Mzuzu we were told that the city officials there now call the TCs '*nduna*' rather than chiefs.

These labels have some relationship to their legal status, but the correlation is not exact. That is, GVH and VH are historical titles of hereditary chiefs who are found in rural areas and are granted legal authority by the Chiefs Act. Some hereditary chiefs are also found in 'urban centres' – both in areas that have been designated Town Planning Areas and those that have not – and, as explained below, are integrated into the hierarchy of the hereditary chieftaincy and answer to a senior chief nearby. But there are town chiefs who are inside formally declared cities such as Lilongwe, who are known as GVH and VH, but their positions are neither hereditary nor are they considered to be of 'royal blood'. They are not recognised by government, that is they are not on the government's register of traditional authorities, and therefore they do not receive a honorarium and are not part of any formal chieftaincy governed by the Chiefs Act.

The titles 'block leader' and the like tend to indicate that the positions are not part of the traditional chieftaincy structure (under the Chiefs Act). That does not mean, however, that these leaders do not relate to the traditional, hereditary chiefs. For instance, in (the formally designated) town of Kasungu there are 'block-heads' who were elected by communities when the traditional authority instructed the people to hold elections; there the elected block leader answers to the hereditary GVH though he is not part of the formal chieftaincy system. In Mzimba urban area a Tumbuka GVH – though 'just a tailor' and not of royal blood – was appointed by the Northern Ngoni Inkosi in the 1950s and remains today. In central Rumphu there is a non-royal, ex-teacher GVH who was appointed by the Tumbuka Paramount. (Indeed, as noted above, there are many newly created villages (outside and in towns) and VHs who are not recognised by government, and it is likely that many of these 'traditional authorities' are not 'royal'). 'Block leaders' or 'local leaders' appears to be the term preferred by government staff who don't want to call these people 'chiefs', especially if they reside in formally designated cities or towns, and if they do not want to acknowledge that they have some authority locally.

Here we label all such (peri-) urban leaders 'town chiefs' unless we need to delineate their status, origins and authority more precisely.

Prevalence

Our survey of numbers of TCs remains incomplete, as no one – neither officials, chiefs nor residents – knows how many town chiefs there are. In some areas even TCs are unable to say how many sub-chiefs they have or how many people are in their communities (e.g., Mchesi township, Lilongwe, 24 Sept 2008), but they claim that the number of people they cover is larger than the comparable number in a rural chieftaincy. This point was made repeatedly by informants in an attempt to justify TCs being paid an honorarium by government.

⁴¹ Though on occasion you may find these in one person, e.g., we met a TC in Zomba who had been elected at an MCP meeting in 1960 as a leader, who is now called a 'chief' by his neighbours and who served as a local councillor from 1962-94 (Ndazipere, 13 Oct 2008).

Town chiefs are found in nearly all urban areas, one exception possibly being the low density suburb (Masongola) north of Kamuzu highway in Zomba where professionals and academics reside. But elsewhere in low density suburbs – e.g., in Lilongwe (Areas 10, 43, and 12) – there are TCs of some description (Sikwese, 26 Sept 2008). Generally the TCs are ‘below the radar’ of expatriate residents, whilst some Malawian professionals who reside in these neighbourhoods say they do not interact with their TCs though they know they exist. In Area 2, a predominantly Asian suburb in Lilongwe, there are TCs, though they do not claim to manage the affairs of Asians, rather they interact with the African domestic and shop workers there (Chisenga and Chananga, 24 Sept 2008).

Peri-urban settlements and high density neighbourhoods have TCs. For instance, in the central region at Kasungu Boma (city centre) there are reportedly 15 TCs. One of these TCs said he was responsible for more than 3000 people and that he has three ‘block-heads’ to help him. ‘Mponela urban’ (central region) is reportedly divided into 6 sections, each with a VH, an assistant VH and advisors (*nduna*) (Nkhoma, Chagwila, 26 Sept 2008 and N Phiri, 29 Sept 2008). A Secretariat official reported there being 16 informal settlements in Blantyre, and in these he estimated there would be perhaps 60-70 ‘block-heads’ (Bandawe, et al, 7 Oct 2008). A GVH in Biwi, Lilongwe, noted having responsibility for something in the order of 90 households (Mphande, 7 Oct 2008). Another in Rumphi urban area said he managed over 150 households (Mbale, 23 March 2009), whilst a VH inside Karonga town claimed to have more than 6000 people in his area (Mwanyango, 19 March 2009).

A survey of TCs is therefore needed in order to gain details of their numbers, titles and provenance, and the areas and number of households for which they claim responsibility. As of now we can safely say there are hundreds, perhaps thousands of TCs. They exist in low, medium and high-density suburbs, informal settlements and formal cities and townships, peri-urban and urban areas. (We have even heard reports of leaders being elected in hospital wards, specifically to represent patients’ interests to the hospital administration and to access services).

Profile

Town chiefs are consistently chosen for having certain characteristics. Specifically, they are reportedly of ‘good character’, ‘hard working’, ‘respectable’ and ‘quiet’ people of ‘good standing’, who know ‘how to stay with people’, ‘should understand the problems of the people’, will ‘help them’, be ‘good to them’ and ‘keep them well’. They have ‘lived there a long time’ and are well settled in an area, often making them ‘homeowners’. They are neither quarrelsome, nor known ‘drunkards’ or ‘womanisers’. They appear to be among the local economic elite – that is, they ‘are self-reliant’ or ‘self-sufficient’. For instance, they are (retired) civil servants, teachers, civil society leaders (and heads of churches) or are businessmen (e.g., a building contractor, a restaurateur, a money-lender, a kiosk owner). Interestingly, we found that several town chiefs who were (s)elected are also members of (hereditary) chiefly families in their home areas, though they claim that their ‘royal’ status was likely unknown to those who chose them to lead in town – a claim that deserves further investigation.

Apparently they are not necessarily chosen because of their ethnic affiliations, and we found TCs came from a range of ethnic groups (e.g., in the Chewa town of Kasungu the senior block leader is a Chewa from Lilongwe, and his deputy block leaders were 2 Tumbuka farmers, both from Mzimba, and a Chewa NGO worker from Kasungu; in Mzimba there is a Tumbuka GVH under the Ngoni Nkhosi.) (Chagwira, 26 Sept 2008; Mbale, 10 March 2009). TCs are selected because they can represent the interests of their communities – that is, they are good ‘public speakers’ and ‘influential’. The tasks they perform (outlined below) demonstrate that they also have to be thoughtful, knowledgeable and patient as well as effective negotiators. There appear to be few women TCs.

Empowerment and status

Town chiefs are a form of ‘hybrid political order’ in that they are a ‘blend between traditional and modern forms of governance, with neither having either a theoretical or practical primacy’.⁴² But Malawi’s TCs are not a *single* blend, for as governance ‘nodes’ they reflect the convergence of a number of institutions, some of which are rooted locally and historically and others that have been formally imposed by colonial and post-colonial regimes.⁴³ Each area/TC appears to be different, though some patterns of empowerment and rootedness are beginning to emerge. Generally but with some exceptions TCs are not ‘chiefs’ in the classical Malawian sense – as outlined in the 1967 Chiefs Act, rooted in history and people’s shared cultural meanings and imaginings, and as practiced today in the rural areas. Nor do they seem to be formal leaders, such as Local Councillors or political party chairmen, both of whom at different times have had authority in the same communities.

Historically, town chiefs seem to have emerged as a result of political and economic circumstances during the colonial era, as townships grew up in Blantyre and people moved there to live and work. Chiefs retained their authority even as the town was delineated (‘General Problems’, n.d.). Later, in the Banda era, the capital was moved from Zomba to Lilongwe (1975) and new areas (e.g., 18, 47, 15) were created for government workers to live. In these areas tensions reportedly emerged between the Chewa hosts and the newcomers, and to reduce the number of ‘quarrels and deaths’, the OPC allowed the formation of TCs. Dr Banda told people ‘to respect the chiefs’. As suburbs were cut out of the ‘forests’ in Lilongwe (e.g., areas 47, 49) new ‘block leaders’ were created in the 1980s (Namkwenya, 16 Oct 2008 and Mphande, 7 Oct 2008). In other words, each city and town has a different history of TC-formation, and their roots in the political economy of urbanisation need further exploration.

Several relatively fluid patterns or institutional ‘blends’ underpinning TCs became evident during our research; others may emerge in due course.

1. The easiest to identify are the ‘royal’ TCs, who have formal power – reflected by the fact that they are paid honoraria by central government and may carry cards identifying them as chiefs.⁴⁴ Their positions are hereditary (though new chiefs can be created/appointed by the OPC and their positions become hereditary thereafter).⁴⁵ These hereditary chiefs exist in ‘urban centres’ that are *not* formal towns (e.g., Nkhata Bay and Rumphu). They are fully integrated into the hierarchy of traditional authority, as governed by the Chiefs Act, and answer upward to a senior chief. But they may also be found in the urban centres, where they report that they are ‘town’ chiefs (as opposed to ordinary rural chiefs) because ‘the town found them there’. In other words, theirs is a hereditary chieftaincy that has retained power as people congregated around them and settlements grew up. These exist, for instance, in Dowa, Chikwawa, and Madisi trading centre near Ntchisi, where urban authorities (including

⁴² Clements (2007), and see Kraushaar (2008).

⁴³ It is important to emphasise again that parchment institutions are not hard and fast, as the numerous laws governing chiefs and their roles are at variance. At the same time historical norms are different in each locality. Therefore, blending informal and formal institutions throws up a wide variety of forms, in which we are attempting to discern patterns.

⁴⁴ One hereditary chief in Balaka town, acting as a TC, said he was not being paid by the state, but this appeared to be because historically the chief’s position rotated between three related families and his was not the one currently recognised by government. We were told that the ‘DC’ was instructed in 2000 not to install any more new chiefs (Kandengwe, 2 Oct 2008).

⁴⁵ Village head(wo)man Nkomba, a chief in the rural area just outside Balaka, told us she’d been created a hereditary chief by Mr Muluzi soon after the town was created in the mid-90s (Nkomba, 2 Oct 2008). A GVH was made a hereditary chief after his community pressed the Paramount at Rumphu to appoint him (Mbale and Chikulamayembe, 23 March 2009). Creating chiefs is often politically motivated; President Mutharika is currently creating new Paramount chiefs (including among tribal groups that were historically ‘flat’ and had no paramount chiefs).

Secretariats) recognise their legal and hereditary authority (Benjera, et al, 29 Sept 2008 and Chitawo, et al, 8 Oct 2008).

2. More complicated are the hereditary chiefs who are TCs, and are found *inside* town and city planning areas. They also report that the ‘town found them there’. But according to government officials’ interpretation of the law, they have no formal authority, yet they retain their power over urban settlers, land, justice, etc. For instance, Village Headman Kazembe, in the Chikanda area of Zomba city, claims to have hereditary status, resides inside a town planning area and acts as a TC. So, too, does VH Ndelemani in Chinamwali, Zomba city, who belongs to a hereditary chieftaincy, is paid a wage by the state, and acts as a TC inside the city limits (15 Oct 2008). VH Rex Mwambuli Mwanyango is a hereditary chief, whose ‘village’ is inside Karonga town; he hasn’t the recognition of government and is not paid an honorarium, but has been ‘chief since birth’, is closely related to the Ngonde Paramount, and ‘to my people I have got power’ (19 March 2009). On the other hand, VH Mziya in Mzuzu was elected by secret ballot at a meeting called by TA Kabundule and he collects an honorarium from the state (11 March 2009). Principal GVH Mwahimba is a traditional leader paid by the state but his area is totally within the town planning area of Karonga. Their status vis-à-vis the local authorities may be ambiguous, as the Secretariat will generally argue they have no legal right to govern inside the city limits; on the other hand they are hereditary, may receive an honorarium, have a TA’s backing and some legitimacy locally.⁴⁶

Our quick survey suggests that the first two types are more prominent in the North, most probably because it is much less urbanised than the South (and there are fewer designated cities/towns) and so traditional chiefs (either longstanding hereditary or created by TAs since the transition) are more common than other types of ‘town chief’, even in those areas that are formally a town (Karonga) or declared public land. The *de facto* continuing recognition of traditional chiefs in the Northern urban areas (with the exception of Mzuzu) may mean that there has not been a need for ‘town chiefs’ to be created, whether by communities, TAs or authorities.

3. There are other TCs who claim the titles of hereditary chiefs, e.g., VH and GVH.⁴⁷ but are not hereditary (or ‘royal’) and are not formally recognised (or paid) by the central state. They appear to use the titles because these confer some sort of traditional claim to power, though their rise to chieftaincy will not have come through birth. Instead, these are appointed, elected or selected. For instance, town chief Chisenga in Mchesi township, Lilongwe, was elected (undoubtedly as a local party official) as a leader during an MCP meeting in his area in 1985 (during the single-party era). He retains his authority and is now called a ‘senior GVH’. One of his deputies, ‘group village headman’ Chananga, was chosen at a ‘funeral election’ in 1996, where political party leaders told the people to select themselves a chief. Though using traditional titles, these two do not seem to relate often to the TAs outside Lilongwe, some of whom retain variable authority within the city limits (Chisenga and Chananga, 24 Sept 2008).

⁴⁶ For instance, some well-respected Tumbuka GVH wear a black turban-like head covering (*mphumphu*) given them by the Paramount, yet not all of these are paid or recognised by government

⁴⁷ Two TCs claimed to be ‘senior group village headmen’. A traditional chief pointed out to us that the title doesn’t exist within the hierarchy of traditional chiefs – a ‘useless’ title he said. (Chisenga, Mazengera, 24 Sept 2008 and H Banda, 29 Sept 2008). Similarly, other chiefs e.g. Mlongoti claim the title ‘Principal GVH’, though no such position is recognised under the Chiefs Act.

Another, similar case is *mfumu* Chigamula, who resides in Sibanyi township in Blantyre city, and calls himself the ‘eyes and ears’ of the GVH. His is not a hereditary post (though he was appointed by the GVH). He resides well inside Blantyre city limits, was not elected and apparently has no formal authority. He answers directly to the GVH and has the respect of his community, which calls him ‘chief’ (Chigamula, 8 Oct 2008). Similarly, GVH Mbale in Mzimba urban area was appointed by the Northern Ngoni Nkhosi in 1953, has been leading the community in town ever since, though without a wage since 1994 (10 March 2009). GVH Mbale in Rumphi was not a ‘royal’ but has been appointed a hereditary chief by the Tumbuka Paramount, and is reportedly going to start receiving a honorarium soon (Chikulamayembe, 23 March 2009).

4. Some TCs rise to power through a combination of traditional authority and elections. For instance, ‘block-head’ Chagwira (and his three deputy block leaders) in Kasungu town was elected by his neighbours after the previous TC died and when the traditional chief instructed the community to hold elections. His deputies answer to him, and he responds to the traditional chief. He is also respected by, and interacts with the town authorities (Secretariat, 26 Sept 2008). According to VH Phiri in Mponela he was elected by ballot by the community 4 years ago, after the hereditary chief withdrew from the town and instructed people to elect a new leader (29 Sept 2008).

A similar thing happened at Lumbadzi (at Lilongwe Airport), where the traditional chief subdivided the urbanising and overpopulated area into 6 ‘villages’ and set up a committee of old women to choose nominees. Those nominated faced elections as residents raised their hands to vote for ‘village headmen’ and ‘assistant chiefs’, whilst the remainder of the nominees became *nduna*. These 6 VHs selected one among them to be the GVH for a period of five years. He answers to the community and TA, who ‘has more power than me and is for life’ (GVH Banda, 29 Sept 2008).

5. Other town chiefs are elected by people who are not mobilised by the TA but by formal authorities. For instance, GVH S Phiri in Dowa (not a town planning area) said the power to elect ‘comes from the DC’. In his case, the Secretariat organised elections for town chiefs, and three or four people were nominated by the community and one elected by a show of hands. He has had to face re-election once, he said (29 Sept 2008). GVH Nyoni in Mzuzu said he became a chief when the Boma selected him to work with it on MASAF projects, and because people didn’t trust the partisan local councillor (11 March 2009). Some TCs appear to have little interaction with TAs, though they may well be called ‘chiefs’ rather than block leaders (e.g., Ndazipere, 13 Oct 2007).

In summary, there appear to be three axes upon which to measure the difference between the status of various types of town chiefs:

- whether they operate inside or outside a formal town/city, or an area that has been designed a Town Planning Area. ;⁴⁸
- whether they come to power and remain through the intervention of a (hereditary, formalised) traditional chief;⁴⁹ and

⁴⁸ As noted above, how the Town and Country Planning Act and other legislation subsequent to the Chiefs Act affect the status of hereditary chiefs remains an issue too.

⁴⁹ One is tempted to say we should establish whether TCs are hereditary or not as a fourth axis, but this status can be trumped by political (un-)appointment. How people view (‘emic’) the difference between whether a TC answers to a TA vs. whether the TC is hereditary him/herself also needs to be explored.

- whether they are subject to democratic institutions like formal elections, set terms of office, and re-elections.⁵⁰ Some appear to be affiliated to particular political parties (as were Local Councillors), though how significant this is remains unclear at this stage.

That these distinctions appear to be more important for outsiders (including Secretariats and government officials) than for local residents who interact with these TCs on a regular basis, is something that must be examined further. Moreover, it may be that other ‘blends’ of institutions appear as more TCs in and outside of planning areas explain to us how they came to power. The main point at this stage is that TCs exist in number and have varied forms of rootedness and different bases for their authority.

3.3 Functions and tasks performed

Town chiefs perform a variety of functions, which emerged organically during the field research and may be grouped into six different (though overlapping) categories: cultural affairs, administration and management of various sorts, oversight of issues related to land and property, resolving disputes, an involvement in politics, and promoting economic and social development.

Not surprisingly these are not unlike the tasks performed and public goods produced by traditional chiefs historically and currently (Annex 3), and overlap with those of Local Councillors when in session, and with other grassroots actors (MPs, Ministry officials, NGOs, DCs’ offices, CBOs, church staff, etc). Further details are needed about how TCs perform their duties, through whom, using what resources, etc. These questions and others await the time when we can do more in-depth ethnographic studies.

Cultural affairs

Traditional chiefs see one of their main roles as ‘preserving’ their distinctive tribal cultures (Mazengera, 24 Sept 2008). Indeed, this is a key responsibility outlined in the Chiefs Act.⁵¹ In practice, they fulfil this mandate through various overlapping socio-cultural and political-economic functions that have emerged historically, including overseeing initiation rituals; keeping track of sicknesses, deaths, marriages and births; helping protect communities from witchcraft; caring for the poor, etc. Some of these tasks have been formalised by making chiefs responsible for ensuring peace and order, security and welfare within their communities.⁵² Some of them, such as taking notice of weddings, sickness, births, incomers and the poor, are undertaken by TCs as well. The upsurge of language/tribal-groupings (e.g., the Ngoni Heritage Association, Muhlako wa Alomwe, Ngonde Kyungu, Mpeta, Mwakasungura Foundation and the Chitumbuka Language and Culture Association) which support traditional chiefs in performing their cultural role and the current effort by Dr Mutharika’s government to bolster respect for ‘traditional’ institutions (e.g., by creating Paramount chiefs, even where none has existed before) are also political factors of some importance.

⁵⁰ One might argue that being subject to elections initiated by the Secretariat denotes formality, but it is not clear that a Secretariat has the legal right to call elections for these types of community representatives, despite the process appearing to be quite formalised in some cases. In Mzuzu for instance, the Secretariat apparently uses an NGO to preside over these elections, which are conducted through secret ballot (Masina and Phiri, 24 March 2009).

⁵¹ ‘... to administer customary laws, perform religious and cultural functions, settle disputes, attend to land distribution matters, and collect taxes...’ (Kayambazinthu, 2000). Chiefs are the ‘custodians of culture’ according to Jentzsch (2005).

⁵² Their cultural role is expressed in various ways, through handling disputes over inheritance and marriages, allocating land, ensuring the well-being of their people, etc. (NDI, 1995).

When talking to TCs about their work, nearly everyone in the centre and south began by mentioning funerals. The funereal tasks they perform are social and economic in nature – they announce the death to the community and other chiefs, they ‘open the graveyard’ and have the grave dug, they permit mourning to begin and ensure funds and *ufa* (maize flour) are collected for the wake. In the North this changes somewhat for in Ngonde areas graveyards are in family compounds. In Rumphi urban area there are three public graveyards and anyone can be buried there, though no mourner is allowed to ‘weep’ until a chief permits it (Mbale and Mlongoti, 23 March 2009). In the Tonga area south of Nkhata Bay clans have their own graveyards and funerals are managed by elders, though the TA must be informed of a death (Malanta, 25 March 2009). On more than one occasion TCs spoke about having to wash the bodies of deceased outsiders, as the local hospital did not perform that duty and no other family members were present to do this important, culturally prescribed task.

The central place of funerals in the narratives of TCs parallels their place in Malawian society. Funerals are frequent events in the lives of Malawians, partly because death is common (over 12% of Malawians have HIV). Also funerals serve as ‘practically the only corporate act of religion’ for most Chewa, and presumably some neighbouring groups (Van Breugal, 2001).⁵³ Historically death has been perplexing, and blamed on the intervention of malevolent spirits. It is partly this continuing belief in the inexplicable nature of death that makes funerals so important.

Specifically, it is generally believed that the spirit (*mzimu*) of the dead survives the body and can cause misfortune for survivors. Therefore, ‘funeral rites are designed to make the *mzimu* depart so that the living may forget the dead’. Immediately after a death the family reports to the chief. He will send young men to inform the population. No one is allowed to eat meat till after the burial as witches are thought to eat the flesh of the dead, so not eating meat is a way to show others you are not a witch. The chief must give permission for the body to be prepared for the grave, and he will lead discussions about the circumstances of the death. Is there anyone who caused the death? If relatives had not warned the chief that there was a serious illness in their family, a case might be brought and the burial cannot take place until the case is settled. A ‘diviner’ can be brought in to determine if the person was killed through witchcraft, though this happens less frequently nowadays since practicing witchcraft is against the law. Only when the case is settled will the chief order the body to be buried.

People will offer their services (e.g., cooking), will bring gifts to defray the costs of a funeral, and will participate in order to comfort the relatives of the deceased and ‘help them forget the deceased’ by distracting them. But people also need to attend out of fear that if they do not go they will be punished. ‘There is tremendous social pressure to go and help’, and if a person doesn’t attend, he will be punished by the chief by ‘forbidding people to help with a funeral in his home; he has to dig the grave all by himself and prepare the coffin’. Since there is a great deal of work to be done, this would be nearly impossible. Moreover, the ‘fear of being accused of having caused the death’ ensures people attend a funeral. ‘A witch (*mfiti*) is believed to be afraid to go to the funeral of his victim. Someone who does not go to the funeral will readily be accused of witchcraft (*ufiti*) since the people cannot see any other real reason for not attending’. In the same vein, there is a need for people to come to stay with the body to ensure witches don’t come and snatch it. Death, then, is ‘something mysterious and frightening itself ... In these dangerous circumstances, when the mysterious touches them more closely [people] need this manifestation of solidarity and mutual encouragement’ (van Breugal, 2001).

⁵³ We recognise that research on the rituals and beliefs of other ethnic groups concerning illness and death require study, but for our purposes here we assume that most Malawians adhere to beliefs similar to those of the Chewa, whose social norms predominate nationally. The following discussion of funerals is adapted from van Breugal (2001).

In a social sense being in control of a funeral, and a graveyard, is a powerful thing. The ceremony brings disparate elements of the community together – as one chief explained, when a ‘foreigner’⁵⁴ dies in his community he must take care of the body because ‘as long as they are in our area they are one of our people’ (Chisenga, 24 Sept 2008). Where family and clan burial grounds are common in the north, a chief can bury a foreigner in his own graveyard, but may instead insist that (s)he is buried in the public cemetery. But a funeral also brings people together in the spiritual sense outlined above, by offering people protection against unseen, though seemingly real dangers through shared behaviour. An appearance of social cohesion and conformity results.

But a funeral also concretises the authority of the chief, and any others who participate in it, such as church leaders and politicians. In this multiparty era politicians whose parties dominate the area where the funeral is held will want to use it to give speeches.⁵⁵ These are sometimes considered inappropriate (as they may cause dissension, or the deceased might have belonged to a different party) and religious leaders will take control of the ceremony instead.

In the single-party era the MCP leadership was informed of the funeral by the chief, and the party took control, collecting cash, and sometimes helping with money for the coffin, ‘blowing the whistle’ announcing the death, collecting the *ufa*, etc. The MYP might have ensured the trading centre was closed during the funeral. At the ceremony the MCP chairman would ‘commiserate with the village headman on the loss of one of his people’ and then would ask ‘all the people in the area to work together to help the bereaved family without considering what type of family it is.’ Any not attending the funeral would be chastised, and threatened that the community would not help with their own family’s funeral (Roe, 1992).

Control of a funeral brings a chief power of a worldly and spiritual kind, which makes it all the more important that he has a graveyard. In most cities cemeteries are owned and managed by the authorities or churches, but in rural areas chiefs and communities have graveyards that are large, closed and undisturbed (often forested) plots of land. Only the chief can ‘open’ the graveyard – literally open the gate and have the grave dug.⁵⁶ Many of the TCs we interviewed appeared to have their own graveyards, as they referred to ‘opening’ them, having the communities clear the paths to them, arranging funerals, etc., though more details about their ‘ownership’ are needed.⁵⁷

We also found that having control of funerals and graveyards can generate revenue for the TC. For instance, one community member in Zomba noted that when she reported her uncle’s death to the VH she took him *ufa* and a K100 ‘token’. He ‘owns the graveyard’ she reported, and so he had his relative ‘open the graveyard’, ordered the gravediggers to start work and later led the funeral. Informants in one southern town reported further that their families pay the local chief K100/month to bury a ‘foreigner’ in his graveyard, explaining that they are considered foreigners because they have come into town from elsewhere to work. If a death occurs and they had not been paying this monthly insurance, they said they would not be

⁵⁴ This Lilongwe-based TC was speaking of Nigerians and Burundians, but it could just as well have been non-Chewa Malawians who had no family living locally (Chisenga, 24 Sept 2008).

⁵⁵ For instance, an MCP-affiliated TC said that officials from the DPP (Mutharika’s party) speak at local funerals, though the area is heavily contested by the UDF, who retain many loyalists in Zomba (Ndazipere, 13 Oct 2008).

⁵⁶ Most people avoid graveyards for fear of spirits, and anyone found in a graveyard without the chief’s permission would be considered a witch (Van Breugal, 2001).

⁵⁷ In Dedza there is an on-going dispute between a TC and a TA over control of the graveyard, resulting in the TC asking the town Secretariat to allocate him a graveyard of his own, a request it refused (Nhlane and Munthali, 30 Sept 2008).

allowed to bury their relative in the graveyard unless they paid the chief K5000. How common this is nationwide remains unknown, and the subject of further fieldwork.⁵⁸

The point is, TCs' management of funerals serves a number of beneficial ends, including fostering social cohesion and peace amongst heterogeneous communities, as well dealing with the very real problem of burying the dead in towns where such government services are almost non-existent. Keeping a graveyard orderly and secure also has some health and social benefits. Spiritual benefits are less easy to measure, though they undoubtedly equate with stability and social security in some form or another. The power that ownership of graveyards gives to TCs and that funeral ceremonies provide to TCs and to politicians and church leaders, is important to our understanding of politics at the local level.⁵⁹

Administration

Town chiefs undertake administrative and management roles in a number of sectors, including economic development, governance, security, and justice. Whilst these sectors are discussed in more detail below it is convenient here to focus on the organisational activities themselves.

TCs work with a number of different agencies and groups. In the field of development – accessing services and obtaining funding, for instance – they might meet with Community Development Committees (CDCs) which are the urban equivalent of the decentralisation programme's rural Village, Area and District Development Committees. If acknowledged by the town/city Secretariats, they might attend so-called 'assembly' meetings, sometimes actually being paid sitting allowances. Historically they have worked with the Malawi Social Action Fund (MASAF), a World Bank-funded initiative that supported infrastructural projects at the community level (e.g., building schools and teacher houses). In that case rural chiefs would mobilise people to collect sand, mould bricks and the like, where town chiefs might do the same or would gather cash from the urbanites in order to hire labourers to do the work. In the past they also met with Local Councillors (who generally took care of development initiatives). Now and previously they have interacted with MPs and party leaders, as well as traditional chiefs. In two communities we heard that they may take in strangers with no funds, who are in need of shelter (though in both cases TCs have become wary of doing this because it resulted in thefts). They also keep an eye out for newcomers, and watch over empty houses, reporting any problems with either to the authorities. In one Lilongwe settlement they acted as intermediaries between the Electoral Commission and community when Muslim electors refused to have their photos taken for their registration cards (DeGabriele, 24 Sept 2008). In Ntchisi they took an active part in ensuring people participated in the recent national census (Jimusole, 25 Sept 2008). In Limbe the chief played a 'critical' and 'positive' role in liaising between a businessman set upon building an aqua-culture project and the local community who wanted to protect their graveyard (Hajat, 8 Oct 2008).

Village headmen in towns – especially those appointed by TAs – will also receive 'subsidies', especially the government fertiliser coupons distributed currently by Ministry of Agriculture extension workers. The upshot of this is that many unregistered villages and VHS are gaining some recognition (and goods) from the state – which local government officials think is one of the main reasons why these villages and VH are being created by TAs. Their existence is not consistent with the official register of villages/VHS kept by local governments, which complain that these VHS assume that they are 'more official and legitimate' in the eyes of

⁵⁸ If widespread – though we have no reason to believe it is – it might help explain why urbanites often take their relatives to their home villages for burial.

⁵⁹ As one TC said, 'people give us respect due to funeral rites, which only we can do' (Kandengwe, 2 Oct 2008). A TA told us, 'chiefs have their own way of punishing. A secret punishment. We'd earmark that family'. For instance, when they have a death at their home, 'how can they move [the body] from that place?' (Matola, 2 Oct 2008).

government (and more deserving of honoraria) as a result of their interaction with the agricultural extension service (Nguluwe, 25 March 2009).

In the most advanced settings (such as Kasungu) a Secretariat will work through the CDC to promote development, and in so doing they will 'recognise [the TCs], meet with them' and discuss issues, township rates, development, roads, bridges, drains, rubbish, and waste. They will involve them in future planning. They are invited to come to stakeholder meetings as 'representatives of the community'. During revenue campaigns they are used to help raise community awareness of the need to pay taxes, but they are not collecting tax themselves. In some urban settings 'an MP will bring a block-head to the Assembly [to get] assistance' for the community (Nkhoma, 26 Sept 2008). Often though, Secretariats shun TCs, not including them on land committees, at consultative committee meetings, or in discussions about town planning.

To summarise, the TCs play a number of roles which mean they have to work with and through formal agencies, such as the police, Secretariat, NGOs and donor organisations, political parties, companies, etc. Their doing this has become more important as a result of MCP and MYP officials disappearing from the scene at the transition in 1994, the disbanding of District Councils (1995-2000), and the postponing of District Assembly elections (in 2005). But just how much their administrative roles have remained consistent or were transformed at these (and possibly other) times is not fully understood.

Land and property

Traditional chiefs' control over land confers significant power and status, but the inroads made by new laws and reforms (such as the National Land Policy of 2000) – or at least how they are normally interpreted by officialdom – and by the scarcity of land (which is now mostly in the hands of families) are central to explaining their declining influence. Naturally they feel threatened by this (and other reforms that have undermined their ability to oversee justice and order locally, and to be represented as a group in a national Senate). Nonetheless, chiefs with powers under the Chiefs Act (commonly assumed to be applicable in those areas not designated as town or city planning areas) are considered 'owners of the land' and have the authority to distribute land that has reverted to the community (e.g., when a family emigrates or expires) and to open and allocate new land.⁶⁰

Not surprisingly, town chiefs would like to have the same control over land, mostly because it generates income (especially profitable in urban settings) and influence. Those TCs who are hereditary chiefs do attempt to use these powers and will allocate land to newcomers, presumably for a price, even within demarcated towns (where officialdom argues they have no rights to distribute land but recognise that in practice they do).⁶¹ Where this happens, 'town rangers' sent by the local authorities may be used to halt sales and destroy buildings (Masina and Phiri, 24 March 2009).

Officially, all chiefs in towns are presumed by government to have no power over public land, which is instead controlled by the town authorities, the Ministry of Lands, the Malawi Housing Corporation or ADMARC. Therefore, TAs with residual power in towns are not included on Town Planning Committees where decisions about land use and sales are made (e.g., Mzuzu: Nyrongo and Gondwe, 24 March 2009). Those TCs who are not hereditary

⁶⁰ Similarly, TAs have the right to create new villages/VHs, though we were told that this was curtailed in recent years by orders from the Ministry of Local Government, which is averse to senior chiefs creating new villages and headmen for personal gain (e.g., by selling village headships and receiving some of the new village's fertilizer coupons from central government). (Sikwese, 26 Sept 2008, Matola 2 Oct 2008; also Nkhoma, 2 Oct 2008, said that in 2000 the DC in Balaka said no new chieftaincies were to be created).

⁶¹ Officials in Mzimba district stated that 'we are always having these cases' of overlapping jurisdiction and disputes between various claimants about land allocations (Nyrongo and Gondwe, 24 March 2009).

chiefs and live within formally designated towns and cities will not have the authority to allocate (or sell) land, though, not surprisingly, we were told of cases where they have attempted to do just that.⁶² At the same time, because allocating land inside towns/cities is such a contentious practice⁶³ (and jurisdictional nightmare), it is also not surprising that hardly any TCs admitted to us that they had sold off land. We did find chiefs who acknowledged formalising land sales by witnessing transactions (for a fee, in this case K1000 from both the buyer and the seller) (e.g., Chimwemwe, Zomba, 15 Oct 2008). Issues concerning land are a key area requiring further legal clarification and analysis.

It is common for TCs to settle neighbours' disputes over property. When, for instance, a family's waste water flows across another person's land, or when an animal or child damages a neighbour's belongings, a TC will arbitrate the resulting dispute. Similarly, they are involved in cases of inheritance of land. Where neighbours cannot agree on a common boundary, the TC will intervene, unless it is a matter of a boundary marker having been dislodged or moved, then the issue will revert to the town/city authorities (Chagwire, 26 Sept 2008).

Justice and order

In the single-party era under Dr Banda local peace and order were maintained by a combination of the paramilitary/police, intelligence agents, the MYP, DC, and officials of the MCP, all working with the chiefs. So-called 'traditional courts', which evolved during the colonial era to hear minor civil disputes and petty crimes, were politicised by Dr Banda to prosecute his opponents (Africa Watch, 1990; Kanyongolo, 2006). At the local level the committees formed by the MYP took it upon themselves to settle disputes, deal with thefts and land issues, as well as fights between community members. They had the power to confiscate goods for payment. The MCP chairman in an area dealt directly with the police, for instance sending a husband who beat his wife to the point of 'bruising her' to the police (where had she not been so badly beaten he would have sent them to the chief for reconciliation) (Roe, 1992). Prior to the transition, then, chiefs were sidelined in the formalised Traditional Courts, subordinated to the DCs and the MCP with regard to local law and order, and dependent on the President for their appointment and dismissal.

Today, the Constitution establishes traditional courts. However, unlike the traditional courts which had been established and operated under the Traditional Court Act until their *de facto* abolition in 1994, those under the Constitution are integrated into the formal judicial system at the level of 'subordinate courts'. The other courts at that level are magistrates' courts and the Industrial Relations Court. Above them are the High Court and the Supreme Court of Appeal.

At the village level there are courts (*bwalo* in the South and Centre and *mphala* in the North) overseen by chiefs and their advisors (*nduna*) practising what is known by donor agencies as 'primary justice'. The Constitution recognises customary law as part of the law of Malawi though the norms and rules the chiefs use to judge cases are not codified. It is estimated there are some 24,000 of these 'customary justice fora', where the chiefs' 'experience, availability and respectability' enable them to adjudicate disputes 'even though they have no state-sanctioned powers to impose or enforce punishments'. In cities and towns it is different. There the chiefs do not 'derive their authority from customary law as such, but operate by the general consent of the community' (Kanyongolo, 2006). In other words, where customary law

⁶² For instance, in Lilongwe a chief started selling land that was owned by the city and had been cleared of people. The DC and Minister of Local Government agreed that this was illegal, but the Minister of Justice intervened and allowed the settlement to go ahead, arguing that it would 'reflect badly on the ruling party' if the people were forced to vacate (Bota, 29 Sept 2008)

⁶³ Schärf (2002) notes city officials complain about the 'tendency of "urban and peri-urban chiefs" to openly and sometimes deliberately violate city by-laws and regulations by allowing encroachments on land'.

and authority enshrined in the Constitution and the Chiefs Act empower chiefs in rural settings to make judgments, in formally designated towns and cities TCs have no such rights or power. Nonetheless, they are hearing cases, interacting with the TA courts, the police and magistrate courts and, at times, levying fines.

One reason this is possible is because justice at the local level focuses on compromise and reconciliation rather than retribution and punishment. Punishments of a more western style, including imprisonment, are reserved for the formal judicial system; the closest that the chiefs' courts come to this is levying small fines.⁶⁴ Their goal, as one specialist noted, is 'to maintain harmony' (DeGabriele, 14 Sept 2008). For instance, it appears that TCs will send any cases, including domestic disputes and neighbourly arguments, where 'blood is coming' to the police (Chagwira, 26 Sept 2008). Criminal cases are also sent upward to the police, though there is evidence that at least some petty thefts are dealt with by town chiefs locally (Ndelemani, 15 Oct 2008).⁶⁵ Whether the status of the TC – 'royal' and hereditary or not – makes a difference to the types of cases they choose to hear – or their communities will permit them to adjudicate – is at this time not known.

In our brief survey TCs reported dealing with the following sorts of cases:

- *Boundary disputes and minor damage to property* – as said by one chief, before neighbours turn to fighting (e.g., about sewage running across another's boundary) people should bring the problem to me. 'Everyone knows his [own] boundary'. 'That's my job – to tell [people] how to stay in town'. If it's a matter of a 'beacon' (survey marker), then he takes this issue to the town authorities (Chagwira, 26 Sept 2008).
- *Inheritance cases* (Ndelemani, 15 Oct 2008).
- *Domestic violence* – e.g., attempting to reconcile partners; divorce cases are sent back to the family (*nkhoswe* can dissolve customary marriages) or the courts to deal with.
- *Dispute resolution* – e.g., between domestic servants, quarrelling neighbours and ex-lovers.
- *Family problems* – e.g., arising from a teenager being made pregnant by a neighbouring boy, or a boy trying to get a girl to marry him without her family's permission.
- *Disturbances of the peace* – but if involving criminal behaviour these cases will be sent to the police. Families 'harbouring thugs' will be 'shunned'. A case where a man had dumped rubbish in the graveyard was mentioned.
- *Witchcraft cases* – common nowadays are complaints brought by parents whose children say they are being taught magical practices (e.g., how to fly) by a person nearby (generally an old woman). These cases are not dealt with by the state courts (as they don't recognise witchcraft) or the police, so it's up to the TC to protect the community. Witches are generally told to move away.⁶⁶ If people are found in graveyards they might well be charged with witchcraft.

⁶⁴ For instance, a boy was fined K200 for hitting an ex-girl friend, plus K150 was paid to the chief by the girl for bringing the case and the boy paid another K150 for being sued (Gama at Zomba, 15 Oct 2008)

⁶⁵ E.g., a theft of four pigeons, which the chief said could have been dealt with locally except that the owner was very angry and so the case had to be sent to the police.

⁶⁶ Chagwira, 16 Sept 2008. Also, three chiefs in Balaka told us about the rise in witchcraft cases there. Children 5-10 years old are claiming to be taught witchcraft, but the chiefs have to be careful because children might be encouraged to say this by siblings. They used to have a rule, one said, that evidence of a child was accepted, but now one must be more careful. If evidence seems valid, one still must treat cases with care as they concern the 'dark world' and need special expertise. A child might be exorcised, for instance, by a witch doctor. In one case the witch admitted to the TA that she had been teaching children witchcraft and was told to move. Another couple was also

Litigants not happy with decisions made by TCs may take their cases to other courts, either magistrates and/or the traditional authorities (which route may depend on how the TC relates to the local TA and the formal authorities; further data collection is needed to accurately document this correlation). We understand that the number of cases being referred to magistrates courts is declining due to the empowering of primary justice fora (De Gabriele, 14 Sept 2008).

Whilst chiefs in villages can use legal precedent, including the knowledge gained from cases they or their predecessor have settled, and rules laid down historically by their ancestors, TCs are having to settle disputes between people coming from different traditions and parts of the country, who may follow different norms and rules. TCs state that they deal with cultural heterogeneity in various ways. More than one TC claimed that when people move into their areas, they must adapt to 'our customs', so they use the norms prevailing locally to judge cases. Others claimed that they use 'common sense' to make their decisions, and make no reference to tradition. One (an Ngoni) said he'd lived with 'foreigners' (Yao) for a long time and knew their customs so he could judge their cases (Matola, 2 Oct 2008). Other TCs admitted to having problems, and said that they might get *nduna* from other tribes to hear the case and help them settle them, or that they might take advice from someone nearby who is familiar with others' customs. Finally, one admitted that if the litigants were dissatisfied with his judgment, he would send a letter with them to their own village chief and he could settle the case according to their own customs.

Besides hearing cases, TCs have other law and order functions. For instance, some are integrated into the national Community Policing initiative, either by overseeing the work of the community police (volunteers or paid guards), and/or by helping to select members of the Community Policing committee. TCs also work with the police. For instance, they will be a first port of call when police are looking for troublemakers or criminals, or dealing with a local disturbance. On the other hand, TCs will take cases to the police. One TC in Kasungu reported following up arrests of suspects, and keeping track in a book⁶⁷ of the disposition of their cases in order to be able to answer any complaints that the community might have about (what it considers) the premature release of criminals (Chagwire, 26 Sept 2008).⁶⁸ That the police take at least some of these TCs seriously was evidenced by stories told by TCs who said that if someone in their communities had gone to the police about an issue, they would be sent back to get a letter from the chiefs before the police would speak to him about it (e.g., Chisenga, 24 Sept 2008).

Politics

Local Councillors ran in 2000 on party tickets, and parties that have power at the national level have officials at the grassroots. This builds on a tradition: under Dr Banda the MCP reached down into the village and home of every resident, making sure that they owned party cards (to access public service) and that they participated in public work parties and ceremonies. Chiefs have also been the pawns of politicians, being dragged onto platforms to lend legitimacy to their campaigns. Malawians are therefore used to local leaderships being

evicted from town for teaching witchcraft (Matola, Nkomba, Kandengwe, 2 Oct 2008). Chiefs in Rumphi said they suspected that many of the newcomers in town had been 'chased' from their homes for witchcraft before settling there. One rural TA admitted not caring where witches went, so long as they left his 'jurisdiction'. Also see van Breugal (2001).

⁶⁷ DFID in recent years has passed out books for TAs and TCs to keep records of cases, and we saw several of these being used in the field, though some TCs noted that they have kept written case records for years as they may be called upon as witnesses, or to explain decisions to senior chiefs to whom their cases are sent.

⁶⁸ Malawians at the transition were not used to rights of *habeas corpus*, and have complained bitterly about the release (on bail or otherwise) of suspected criminals after 3 or 4 days.

party-politicised, though everyone repeats by rote, that chiefs are now expected to ‘follow the government of the day’.

We picked up only a hint of how politicised TCs are.⁶⁹ We were told by one MP that it was only natural that parliamentarians do everything in their power to win over the chiefs, especially during elections (Tembo, 23 Sept 2008). In rural areas we know that chiefs can sway their subjects to support one party or another, though in town we suspect that TCs will not have that same influence – partly because urbanites are subject to more media and information than isolated rural communities. On the other hand, we understand that some TCs have party affiliations (for instance, two retained MCP allegiances, having been selected during the single-party era) and we suspect that others may change their party loyalties to take advantage of goods being distributed by politicians (Solomon, 26 Sept 2009). How their being affiliated to parties affects how they carry out their duties, and how they relate to Secretariats, politicians, other chiefs, and to their communities, remains the subject of further research.

We learned that TCs, like rural chiefs, must be notified in advance by any politician who wants to hold a rally in their areas.⁷⁰ (This is in keeping with the electoral law that requires candidates to gain permission in advance from the police to hold rallies in particular areas.) Also, TCs will meet with their MPs to discuss issues of interest to the community, especially development needs. For instance, MP Nancy Tembo had organised a meeting of TCs in her constituency, with the Lilongwe city Secretariat the day we met her, to discuss a local initiative – the building of a community day-care centre on a ‘heritage site’ (a *Gule waMkulu* dancing arena). She also admitted to paying them small tokens (K50) for attending such meetings.

To understand the power dynamics at local level, we were curious to find out how important a TC’s approval of an MP’s candidature was to the latter’s decision to run for office. One MP said she had sought the ‘approval’ of the chiefs (TAs and TCs) in her area before running (and changing parties) (Mkandawira, 23 Sept 2008). Other observers, including TCs, were more modest, one declaring that a parliamentary candidate from his area was like his ‘son’ and so he should be informed of his decision to run (Chagwira, 26 Sept 2008) – a position maintained by other TCs as well. One TC said he might counsel an MP with little chance of winning not to run, but most said they would only accept the candidate’s notification and not comment on the advisability of contesting.

Social and economic development

Building rural infrastructure and raising food security were goals sought by MCP officials and the MYP, though achieving them was perverted by political aims and transformed into activities that sometimes relied on coercion to get things done. As a result, people came to rely on the state, ruling party or a ‘responsible person’ in the community to initiate development (Roe, 1992), creating a notoriously passive citizenry that rarely drives its own reforms.⁷¹

⁶⁹ e.g., Mrs Nancy Tembo, MP, noted that since 1994 TCs were ‘more or less divided along party lines’ (23 Sept 2008).

⁷⁰ It may also be wise to notify them, as one TC said, ‘not many people will go to a meeting if they have not heard from the chief that a rally is to be held’ (Chisenga, 24 Sept 2008).

⁷¹ Civil society’s passivity is widely recognised and commented on, but its origins remain unclear. Whilst MCP rule had a role (e.g., making people wary of becoming conspicuous, and becoming used to having the party take the lead in development), colonial rule and missionary influences probably played a role. There are social traits recognised by Malawians which are apparently driven by other concerns – e.g., not wishing to appear proud or prosperous, partly to ensure no one is jealous (*nsanje*) and tempted to use witchcraft against you (Simwaka, 26 Sept 2008).

People tend, then, to work for themselves and their families, but seem to find it difficult to create ‘flat’ voluntary organisations or community projects that span or bridge their social divisions.⁷² They seem to require someone to take the lead, especially if there is a vacuum (e.g., no Assembly, Local Councillors or traditional chief). Perhaps too, government officials are less prepared to work with leaderless organisations. In any event, in urban environments TCs fill the void with regard to community development and relief. With public goods and services poorly provided by government, especially in high-density suburbs and informal settlements, urban dwellers turn to their MPs and TCs. Both of these appear to have taken on a more active development role in recent years, partly due to the decline of party-run development projects, the reduction in local government funding, and because MPs now receive incentives (Constituency Development Funds) to initiate projects at home.⁷³ Moreover, TCs report that they are called upon to take up a development role that previously would have been carried out by Local Councillors (e.g., Chisenga, 24 Sept 2008). Some reported that as a result of Local Councillors not being in place, accessing development funds had become more difficult (though in reality, this may be the result of decreased funding to local arenas).

Evidence collected indicates that TCs are instrumental in a number of different ways:

- In some places they ‘work hand-in-hand’ with Community Development Committees, which are the fora that help Secretariats identify and plan development initiatives inside town/city planning areas.
- They are ‘entry points’ to communities for those NGOs that want to work in their areas, e.g., doing HIV training, promoting women/child protection, immunizations, etc.
- They mobilize communities to attend development functions (e.g., World Habitat Day).
- They collect materials and/or money from members of communities in order to undertake development projects (e.g., sand and brick moulding), some initiated by MASAF.
- In places where chiefs receive fertilizer coupons they distribute them.
- They pass on residents’ complaints about services to the town authorities (e.g., roads, sanitation, water, rubbish collection, insufficient drugs at clinics) and work with the authorities to improve these situations.
- Some liaise with their MPs to keep them informed of community needs.
- Sometimes they take in destitute visitors for short periods of time.
- They will encourage people to send their children to school,⁷⁴ and to work on roads and other community tasks.⁷⁵
- They may even participate in planning in what are generally unplanned settlements. One Director of Planning & Development (Ntchisi) said TCs needed to bring coherence to a community formed of people with divergent backgrounds and ideas. This meant telling them how to deal with liquid and solid waste, that they shouldn’t build their houses in roadways, or block waterways with their constructions. One TC

⁷² Note though, that some volunteer organisations centred on ethno-linguistic origin or church affiliation do exist in towns (Kamwendo, 2002).

⁷³ CDF monies encourage MPs to focus on developing their own areas, rather than on national development, but this fits well with the view of most locals who think the first task of their own MP is to be bringing goods home to them.

⁷⁴ A ‘block-head’ in Kasungu explained that he tells his people to send their kids to school. ‘He doesn’t allow them to hang around’ in town; ‘they cannot just stay’ (Chagwira, 26 Sept 2008).

⁷⁵ The DC at Ntchisi said that the TC were mobilizing communities to send their children to school and to ‘reshape’ their roads, and that one refused and was fined by a TC. He came to the DC to complain and he told him, ‘so what’s wrong’ with doing the work, and sent him back to the TC (Mgunda, 25 Sept 2008).

says he oversees a drama group that teaches hygiene to community members (Jimusole, 25 Sept 2008).

Systematic research is needed to determine the full range of development tasks the TCs are involved with, the extent to which they can initiate projects, how they rally communities to help themselves, whether those with different sources of legitimacy and authority are more able than others to mobilise communities and obtain support from the Secretariats, etc. Much remains to be done, but we can say with certainty that TC help produce developmental outputs in communities that are otherwise poorly served.

3.4 Relationships

TCs are not formally recognised by government at any level, yet virtually all government employees at central and local levels who we interviewed acknowledge their existence and importance. One CEO said that without them ‘it would be a disaster’ (Mgunda, 25 Sept 2008), which was a sentiment shared by other officials as well as residents. Whilst not formally acknowledging their existence, most officials interact with their own TCs when necessary (and culturally appropriate, e.g., for funerals, weddings). One senior staff member of the Blantyre Secretariat is, in fact, a Town Chief in Biwi, Lilongwe, and we were told there is a messenger within the Ministry of Local Government headquarters who is a TC.

As noted above, some TCs seem to have good relations with traditional chiefs, whilst others do not interact with them at all. Not surprisingly there is tension between the two in some areas, for TAs take their hereditary and legal status seriously and some see the TCs as usurpers. TCs were variously described as useless and as doing nothing of real value for the community by TAs, or doing their work only to earn money (Tembo, 23 Sept 2008 and Mazengera, 24 Sept 2008).

TCs work with Secretariats in many towns, though not all – as some local authorities refuse to recognise them – and with their MPs. They interact with NGOs, religious leaders, and previously with Local Councillors and Assemblies. They sometimes sit on development committees and attend ‘assembly’ (consultative committee) meetings at town halls. They interact regularly with the police and community policing committees. They will also work with *ad hoc* committees created to promote development, such as school (construction/repair) committees. They are called upon to help periodically by government agencies, e.g., the Electoral Commission and census takers. All in all they are recognised by most urban service providers as valuable interlocutors, coordinators, and mobilisers.

3.5 Motivation and incentives

Since TCs – except those who are recognised hereditary chiefs – do not receive a wage from the state, they are reliant on payments from those who accept that their services and presence are of some value. As noted above, sometimes they are able to charge fees (e.g., for adjudicating a dispute, overseeing a funeral) and collect fines (for court proceedings, refusing to do community work). A few admitted to receiving ‘a chicken’ or ‘a goat’ for performing services – or an animal with ‘four legs’ when receiving a ‘sorry’ for something ‘serious’ (Nkomba, 2 Oct 2008) – though these may be euphemisms for minor cash payments. Sometimes they are provided with ‘sitting fees’ by ‘assemblies’ and Secretariats for attending meetings, and some appear to be given ‘token’ payments by MPs. As noted above, several people said that they pay 100K/household per month to their chief for future access to his graveyard. The range, sources and amounts of income TCs receive from communities across the country are not known.

Mostly TCs claim to do the work out of good will for the community. One likened it to being a senior member of a church, citing Matthew 12:33 as justification (‘by its fruit the tree will

be known'). That said, being a TC undoubtedly brings with it the opportunity to collect rents or perquisites. For instance, staff in Kasungu's Secretariat assured us that one TC (probably Mr Chagwira, a building contractor) benefited by winning many government contracts, which meant he was able to hire his 'siblings' and keep equipment at his house that he could use on other jobs (Nkhoma, Chagwira, 26 Sept 2008). Other benefits also accrue to TCs – such as being in a position to make decisions that affect their own (and family's) interests, being close to other leaders who are able to distribute favours and appointments, and simply enhancing one's status and reputation in a community. It has been suggested that TCs may actually perform better than VHs in the hope that they will be recognised by government and begin receiving an honorarium.

3.6 Accountability, authority and legitimacy

Our preliminary findings indicate that TCs have variable amounts of authority and legitimacy. This appears to be related to their sources of power (their rootedness in the law and/or tradition) and to what goods they produce and for whom. We explored these issues by determining who selects the TC (outlined above), who can remove them, the extent of their powers, and what they might do if community members defy them. We spoke to TCs, communities and local authorities.

Removal of the TC

Few TCs have set terms or are subject to re-election, though a couple claimed having to face new elections every few years. As noted above, some town chieftaincies are hereditary, but many TCs are selected or elected/appointed for indefinite terms. Many say they came to office when their TA decided there was a need for a TC, or when the previous TC died or moved away. Most indicate an intention to remain in office until they die.

But can they be removed? This seems to be possible, but it will depend on how the TC came to power. If appointed or elected with the approval of a TA, then it's to the TA that the people will go to complain. One senior TC (elected at an MCP rally twenty years ago) said he had had complaints about junior TCs from the community, and had had to remove them and appoint new ones (Chisenga, 24 Sept 2008). Similarly, if a town Secretariat has a role in empowering the TC, it might be approached by disgruntled residents. Those whose appointments were a result of actions taken by the MCP during the Banda years seem well entrenched,⁷⁶ but are they any more unassailable than a UDF- or DPP-affiliated TC? Exactly how influential a TC's party affiliation is for their survivability (especially as ruling parties change in this multiparty era) needs elaboration.

Powers

The extent of TCs' authority appears to differ, though we are not yet in a position to elucidate the principles and patterns that explain and describe those differences. We know for instance, that some TCs are recognised by the police, who come to them to find suspects and who allow TCs to track cases within police jurisdiction. In Lilongwe when the police were recruiting new officers, they asked the TA for letters of recommendation, and he in turn came to TCs to write them for urban residents (Chisenga, 24 Sept 2008). They seem to keep track of new residents, empty houses and troublemakers, reporting these to the police when necessary. As noted above, they will refer cases to the

⁷⁶ Indeed, it is likely that these old MCP-affiliated TC were also MCP chairmen or other senior officials. Chirwa (13 Oct 2008) noted that in the Banda years there was no clear distinction between local government and party elections, with many functionaries holding multiple positions and 'reporting to party structures'.

police when disputes reach the level of spilling blood, and will take part in recruiting (or hiring) neighbourhood watchmen.

They appear not to collect tax, though in Kasungu they help raise community awareness of the need to pay tax. They claim to handle few funds – this is left to committees (e.g., school building) instead. They are informed of political rallies and new parliamentary candidates, but apparently do not have the authority to halt these. Their authority to adjudicate cases undoubtedly varies, but certainly nearly all the TCs we spoke to do this regularly, as well as impose fines. They take note of all serious illness as well as weddings, deaths and burials, and more than one said they did not want to ‘hear drums’ or ‘singing’ in their areas without being told the reason beforehand.

They seem also to have the power to get a witch removed from the community, after a hearing of some sort takes place and/or the local *nganga* (sorcerer) decides guilt through divination. This is important because the state (magistrates, police, authorities) does not formally recognise the existence of witchcraft and people feel vulnerable as a result (van Breugal, 2001; Chagwira, 26 Sept 2008; Matola and Kandengwe, 2 Oct 2008; Namkwenya, 16 Oct 2008; Focus group, Mwandkawle Village, Zomba, 15 Oct 2008).⁷⁷

In summary, in explaining the breadth of his role, TC Chinsenga told us ‘people here are from villages and they know what a chief is and what he can do’ (24 Sept 2008). That seems to be the case everywhere: the great majority of town dwellers are from rural areas where they grew up with traditional chiefs; they remain ‘translocal’ and in the end few of them stay in town past retirement, but return home to their villages to grow old, die and be buried. The template that most carry in their heads about the appropriate role of an urban leader will be based on their experience in the villages – which, we accept, have chiefs with forms of authority that differ and result from their own unique ‘blends’ of institutions and history. But we believe the default mentalité of most urbanites regarding the power a TC may use is based on their expectations of traditional chieftaincy, but that these are modified in town by factors such as financial independence, living near strangers, higher levels of education, and the discourse around democracy.

Acts of defiance

Asking a TC what he would do if someone in his community defied his orders, was illuminating. Virtually everywhere the question was met by shock and surprise, as it appeared to TCs that the very notion of someone sane (not a ‘character’) defying them was outlandish. More than one had to speculate about what he might do, for they had never experienced such a thing! On the other hand, some admitted having to deal with insolent youths and contentious residents.⁷⁸

In fact, several complained that defiance was a problem that had become more widespread since the advent of multipartyism. In the Banda era people ‘knew how to act’ and were more respectful of chiefs and leaders. (Of course, the unstated subtext was that during the Banda years, the MYP, police and MCP chairmen would punish anyone who disobeyed at local level, just as Banda and state security would detain serious opponents). This common

⁷⁷ Though it appears that TCs may have less power than a traditional chief operating outside urban areas in this respect. As they are the ‘owners’ of the land, most traditional chiefs say that they ultimately have – and on occasions exercise – the power to ‘banish’ those within their jurisdiction – presumably an extremely powerful sanction, whereas TCs may have to work through urban authorities to have someone removed.

⁷⁸ Whether a TC is ‘royal’ or not may result in different levels of public defiance, a thesis worth testing.

Malawian refrain – complaining that democracy has brought ‘too much freedom’ – was parroted by several TCs.

So, how do TCs deal with the people who reject their advice, judicial decisions, fines, orders to participate in community work projects, etc? Their first strategy is to display patience and reason with them. They might also have their *nduna* speak to the person privately and explain matters more carefully. This is in the nature of fostering conciliation and defusing anger, which is the preferred mode of operating socially. If this fails, a TC can send the matter up the hierarchy, e.g., to the GVH or the TA. This is common in court cases where a TC’s judgment is found to be unacceptable. Some issues will be referred to the police and others to the Secretariat, especially if they concern the law or development issues. One TC explained to us that he would ask the Malawi Housing authority to evict a particularly troublesome person from his community, an action he said had been approved some time ago by the OPC (Namkwenya, 16 Oct 2008). This emulates the powers of rural TAs, who are known to evict people from their areas if they are witches or especially defiant (e.g., Malanta, 25 March 2009).

The most frequently mentioned method of dealing with difficult residents was by threatening them with shunning. Specifically, a person will be told that by non-conforming, they are putting themselves outside, or above the community. There is an inherent criticism of anyone trying to rise above the community, with the general retort, ‘you’ll see’, or ‘just wait’. People like this may be left out of projects that distribute goods, such as Food for Work programmes or coupon distributions. One GVH (not ‘royal’ though appointed by a traditional TA) said he had his community police (manned in part by ex-MYP) bring townspeople to him if they disobeyed his orders. Especially worrisome is when shunning extends to the threat of refusing to help at the time of deaths and burials (see above for fears associated with funerals). A person needs additional hands and funds to perform a proper burial (holding a wake, moving the body etc). And importantly, without the help of a chief the aggrieved person is unlikely to access a cemetery or grave easily. Thus, a threat of ‘you just wait till someone in your family dies’ is particularly effective at producing conformity, even amongst the most recalcitrant.

4 Conclusion

This study has found that town chiefs are a hybrid local governance mode found within urban and peri-urban areas throughout Malawi. Town chiefs are leaders who are created and sustained by specific groups of individuals to fill a local governance vacuum and to address problems arising from rapid and relatively unplanned urbanisation. There appears to be a difference between traditional authorities who have been ‘found’ by towns/continue to exercise jurisdiction within towns – a type that maybe more prevalent in the less urbanised North – and local leaders in towns who have been ‘created’ by officialdom and/or residents to fill a gap and are modelled on traditional chieftaincy. Unlike most village leaders in Malawi and elsewhere in rural Sub-Saharan Africa, TCs manage to produce beneficial outcomes in an environment populated by extremely diverse communities with different traditions. This they boast is an advance on the activities of rural TAs who have a much easier time managing smaller, more homogenous communities with less pressures arising from social and economic transformation. Most TCs operate outside state structures and without statutory recognition though the vast majority of officials agree that they are instrumental in keeping Malawi’s urban areas from descending into ‘chaos’.

Their legitimacy, authority and roles that arise from overlapping normative frameworks relate to four governance modes of interest to the Local Leadership theme: chiefly, associational, administrative, and local democracy. It appears from our brief survey that there are different types of town chiefs, identified by their titles, origins, status, backgrounds and relationships. Important factors include whether they are: (i) hereditary; (ii) operating inside a town/city planning area; (iii) sanctioned by a traditional authority; (iv) subject to democratic institutions

(e.g. elections); and (v) affiliated with a party. The degree to which such factors lead to variations in power, legitimacy and effectiveness, in relation to different functional domains, needs further research.

Regardless of their status, all town chiefs appear to undertake similar functions, which can be organised into six spheres: cultural affairs; administration; land and property; justice and order; politics; and social and economic development. This suggests that across different ethnic groups and localities, poorer urban residents experience similar local governance problems and have common expectations that they look to their leaders to fulfil. The functions undertaken by town chiefs mirror those performed by chiefs in rural areas, which suggests that villagers have needs of a similar sort and that 'translocal' residents seek leaders who can address these, whether or not they are part of a chiefly lineage. Chiefly figures in towns and villages have importance in terms of both customary (e.g. funerals or justice) and state-related (e.g. intercession with authorities) activities. The norms underpinning activities performed by chiefs in rural areas therefore provide a template (or *mentalité* and shared understanding) for urban residents who come together from all over Malawi and beyond, but who must act together to produce common goods. These cannot simply be equated with 'traditional' social norms, however.

Firstly, traditional chieftaincies are themselves an institutional hybrid as a result of the historical process of state formation. Secondly, institutions similar to those of traditional chiefs may underpin town chiefs, but these are being adapted to urban conditions (e.g. absence of state recognition, cultural heterogeneity, etc.) and to specific demands arising in each locality. The hybrid nature of town chiefs is further influenced by the complexity of parchment institutions arising from legal innovations and inconsistencies and their various interpretations. Town chiefs are best described as hybrid governance modes resulting from an indigenous adaptation of an existing hybrid institution to a modern environment.

The existence of recognised norms and shared institutions alone does not, however, explain how groups overcome collective action problems. Individuals must also have incentives to comply with these norms and not free-ride on the compliance or efforts of others in the group. The presence of a leader able to enforce the rules is therefore important, especially where communities have been conditioned historically to wait until a recognised elite takes the initiative. Town chiefs derive authority from a range of customary affiliations and a recognition by local officialdom of their value (if not always their legality), which provide them with an assortment of sanctions that support rule-enforcement. Examples include their ability to deny access to burial sites and proscribed funeral preparations, the letters that residents must obtain from town chiefs to gain entry to police stations or Secretariats, their involvement in the allocation of gardens, even within Town Planning Areas, and possibly also their ability to orchestrate the removal of individuals from communities. The inter-relationship between norms and sanctions in different spheres deserves further research, for instance, on the degree to which authority in one sphere reinforces authority in another. More research is also required to determine not only what motivates communities to acquiesce to and sustain these institutions, but also why town chiefs take on these roles.

Town chiefs, therefore, help groups to overcome collective action problems through being supported by overlapping norms that: (i) enable them to bridge and create a sense of belonging and cohesion amongst disparate individuals; and (ii) endow them with authority and effective sanctions to impose rules. This enables town chiefs to contribute to the provision of important public goods, and we suggest that two in particular warrant further research: (i) justice and reconciliation; and (ii) security and order (mundane and spiritual). Both are fundamental public goods that are particularly important for generating belonging and cohesion in urban settlements where the lack of planning and funds, and weak state capacity lead to unmet needs. Whilst of use in their own right, they are also intermediate

public goods, necessary for the generation of developmental outputs such as the building of infrastructure and delivery of social services that depend on collective action.

What does this initial exploration offer donors? In due course the Local Leadership theme of APPP will make recommendations about whether and how outside funders can ‘go with the grain’ of local institutions to enhance economic growth and effective governance. With this in mind, during our interviews we spoke to Malawians about the future of TCs. Nancy Tembo, MP, told us (23 Sept 2008) that she had recently laid a motion before the National Assembly to have the Ministry of Local Government pay town chiefs an honorarium – a move that we subsequently found was popular among TCs. The motion passed but the Ministry has not acted on it (and doesn’t appear ready to do so in the future) for a number of reasons. These include the high cost of paying TCs as well as the government’s inability to regulate them.

But formalising TCs also goes against the ‘ideological grain’ in that, when donors and government in the mid-1990s planned decentralisation, TCs were deliberately excluded. This is because the prevailing ideology held that development was to be within the purview of democratic actors (hence, the newly created Local Councillors, Assemblies, CEOs and Secretariats) and post-transitional Malawi was going to restrict the role of traditional and non-elected leaders (Sikwese, 26 Sept 2008 and Bota, 29 Sept 2008). Traditional (hereditary) chiefs were to retain their cultural roles but not much else. Now, in the absence of Assemblies and councillors and the weakness of grassroots political and development-planning structures, officials seem to recognise the value of TCs. Nonetheless, many suggested they should have job descriptions, set terms of office and conditions, (re-)elections and payment, and should meet minimum criteria to be eligible to apply for the posts.⁷⁹

Our question then becomes, would these newly regulated and democratically mandated TCs have the same roles, authority, legitimacy and forms of accountability that they do now? Would they be more or less effective? In short, TCs are too poorly understood to make any recommendations for donors or the Government of Malawi, other than that more research is needed of the kind that APPP is proposing. Without further study there is a high risk that the actual dynamics (and variations in these) will be misunderstood and that premature interventions will have unforeseen or even negative impacts on local governance and community organisation for development.

⁷⁹ See Schärf (2002) for a similar position on formalisation of urban and peri-urban chiefs.

References

- Adams, Martin (2004) 'A Review of DFID's Engagement with Land Reform in Malawi'. London: DFID.
- Africa Watch (1990) *Where Silence Rules, The Suppression of Dissent in Malawi*. New York: Africa Watch.
- Baker, Colin (1972) 'The Administrative Service of Malawi: A Case Study in Africanisation', *Journal of Modern African Studies* 10 (4): 543-60.
- Baker, Colin (2001) *Revolt of the Ministers: The Malawi Cabinet Crisis, 1964-1965*. London: I.B. Tauris.
- Blantyre City Assembly (2000) 'Blantyre Urban Structure Plan 2000'. Blantyre: Blantyre City Assembly.
- Booth, David (ed.) (2008) *Africa Power and Politics Programme: Research Streams 2008/2010*. London: APPP (www.institutions-africa.org).
- Cammack, Diana (2001) 'Malawi at the Threshold: Resources, Conflict and Ingenuity in a Newly Democratic State'. The Project on Environmental Scarcities, State Capacity and Civil Violence, American Academy of Arts and Science and University College. Toronto: University of Toronto, Nov.
- Cammack, Diana, Fred Golooba Mutebi, Edge Kanyongolo, and Tam O'Neil (2007) 'Neopatrimonial Politics, Decentralisation and Local Government: Uganda and Malawi, 2006'. Good Governance, Aid Modalities and Poverty Reduction Working Paper 2. London: ODI.
- Chiweza, Asiyati Lorraine (2007) 'The Ambivalent Role of Chiefs: Rural Decentralization Initiatives in Malawi', in Lars Buur and Helene Maria Kyed (eds), *State Recognition and Democratization in Sub-Saharan Africa: A New Dawn for Traditional Authorities*. Basingstoke: Palgrave Macmillan.
- Chome, John (2007) 'Malawi is Going to Town: Implications for Attaining the MDGs', UN Habitat, Malawi Programme Manager, Powerpoint presentation, 27 June.
- Clements, Kevin P., Volker Boege, Anne Brown, Wendy Foley, and Anna Nolan (2007) 'State Building Reconsidered: The Role of Hybridity in the Formation of Political Order', *Political Science* 59(1): 45-56.
- CLGF (n.d.) 'The Local Government System in Malawi'. CLGF Country Profile. London: Commonwealth Local Government Forum (available at www.clgf.org.uk).
- Cross, Sholto, and Milton Kutengule (2001) 'Decentralisation and Rural Livelihoods in Malawi'. LADDER Working Paper. Norwich: University of East Anglia.
- Daily Times* (2008) 'Town Dwellers to Double by 2010', 2 Oct.
- Englund, Harri (2002) 'The Village in the City, the City in the Village: Migrants in Lilongwe', *Journal of Southern African Studies*, 28 (1): 135-52.
- FANRPAN (2003) 'Review Of Land Policy In Malawi'. Policy Brief No. 3. Harare: FANRPAN, July (available at: www.fanrpan.org/documents/d00030/Policy_Brief3_2003.pdf).
- 'General Problems Experienced in the Unplanned Settlements of Blantyre City, Malawi (n.d.) [provided by the Blantyre City Secretariat, no author].
- Government of Malawi (1997), *Public Land Utilisation Study*, Zomba: GoM.
- Government of Malawi (1999), *Final Report of the Presidential Commission of Inquiry on Land Policy Reform*, Zomba: GoM.
- Government of Malawi (2004) *Constitution of the Republic of Malawi*. Lilongwe: GoM.
- Government of Malawi (2006) *Malawi Growth and Development Strategy: From Poverty to Prosperity, 2006-2011*. Lilongwe: GoM.
- Ibik, John (1970) *Restatement of African Law, Vol.I: The Law Marriage and Divorce*. London: Sweet and Maxwell.
- Ibik, John (1971) *Restatement of African Law, Vol.II: The Law of Land, Succession, Movable Property, Agreements and Civil Wrongs*. London: Sweet and Maxwell.

- Jentzsch, Corinna (2005) 'Power to the People – Power to the chiefs? Traditional Leaders in Local Government in Malawi'. Report for Malawi-German Programme for Democracy and Decentralisation/MGPDD, Lilongwe, Oct.
- Kadzamira, Z. D. (1967) 'Constitutional Changes in Malawi 1891-1965', in B. Pachai, G. W. Smith, and R. K. Tangri (eds), *Malawi Past and Present: Selected Papers from the University of Malawi History Conference, 1967*. Blantyre: Christian Literature Association in Malawi.
- Kamwendo, Gregory H., 2001, 'Ethnic Revival and Language Associations in the New Malawi: The Case of Chitumbuka', in Englund, Harry, ed. (2001) *A Democracy of Chameleons: Politics and Culture in the New Malawi*, Stockholm: Nordiska Afrikainstitutet.
- Kanyongolo, Fidelis Edge (2006) *Malawi Justice Sector and the Rule of Law*. New York: Open Society Foundation.
- Kawonga, Aggrey J. C. (1999) 'Country Study on The Experiences of Strategic Planning by Urban Local Authorities in Malawi'. Lilongwe: Lilongwe City Assembly.
- Kayambazinthu, D. (2000) 'Empowering Communities to Manage Natural Resources: Where Does the Power Lie? The Case of Malawi, in S. Shackelton, and B. Campbell (eds), *Empowering Communities to Manage Nature Resources: Case Studies from Southern Africa*. Bogor Barat: CIFOR and the Common Property STEP Project, CSIR, March.
- Kayuni, Happy. M., and Richard I. C. Tambulasi (2005) 'What Does a Commitment to Environment and Development Imply for Urban Centres in Malawi?'. Paper given at the 'Urbanization, Environment and Development in Africa' seminar, 25-28 February, Stellenbosch, South Africa.
- Kiwanuka, M. Semakula (1970), 'Colonial Policies and Administrations in Africa: The Myths of the Contrasts', *African Historical Studies* 3 (2): 295-315.
- Kraushaar, Mark, and Daniel Lambach (2008) 'Hybrid Political Orders: The Added Value of a New Concept'. Unpublished paper.
- Maliro, D. (2001) 'Popular Participation and Defacto Systems', Bunda College of Agriculture, unpublished.
- Mlia, Justice Raitt Ngoleka (1975) 'Public Decision-Making and the Spatial Organisation of Development in Malawi'. PhD Thesis, Rutgers University, New Jersey.
- Munthali, Alistair, et al. (2006) *Improving the Health of Children among the Urban Poor in the City of Blantyre*. Zomba: University of Malawi, Centre for Social Research, May.
- National Statistical Office (2008) 2008 Population and Housing Census: Preliminary Report. Zomba: Malawi.
- National Democratic Institute (NDI) (1995) *Chiefs: Traditional Authority and Democratic Governance in Malawi*. Washington, DC: NDI, Feb.
- OECD (2008) 2008 Survey on Monitoring the Paris Declaration: Malawi Country Chapter. Paris: OECD.
- Olivier de Sardan, Jean-Pierre (2008) 'The Quest for Practical Norms of Real Governance in Africa'. APPP Working Paper. London: APPP (www.institutions-africa.org).
- PANA (2004) 'Pressure Group Calls for More Urban Food Production in Malawi'. Hershey, PA: PANA, 7 Aug.
- Peters, Pauline and D. Kambewa (2007) 'Whose Security? Deepening Social Conflict over 'Customary' Land in the Shadow of Land Tenure Reform in Malawi', *Journal of Modern African Studies* 45 (3): 447-72.
- Phiri, Frank (2004) 'Development-Malawi: Rapid Urbanisation Looks Irreversible', Inter-Press Service, 27 July (available at: <http://ipsnews.net/interna.asp?idnews=24810>).
- Phiri, K. S. (2001) 'The Prevalence, Intensity and Ecological Determinants of Helminth Infection among Children in an Urban and Rural Community in Southern Malawi', *Malawi Medical Journal*, 13 (3): 22-6.
- Poeschke, Roman, and Wiseman Chirwa (1998) 'The Challenge of Democracy in Malawi: Socio-Anthropological Conditions'. Report for German Agency for Technical Co-operation (GTZ). Lilongwe: InterAktion and University of Malawi.

- Pryor, Frederic L. (1990) *The Political Economy of Poverty, Equity and Growth: Malawi and Madagascar*. Washington, DC: World Bank.
- Roe, Gillian (1992) 'Beyond the City Limits: Anatomy of an Unplanned Housing Settlement in Lilongwe, Malawi'. Lilongwe: UNICEF, June.
- Rotberg, Robert I. (1966) *The Rise of Nationalism in Central Africa: The Making of Malawi and Zambia, 1973-1964*. Cambridge, MA: Harvard University Press.
- Schärf, Wilfried et al. (2002) 'Access to Justice for the Poor of Malawi? An Appraisal of Access to Justice Provided to the Poor of Malawi by the Lower Subordinate Courts and the Customary Justice Forums'. Report for DFID. Lilongwe: DFID (available at: <http://www.gsdrc.org/docs/open/SSAJ99.pdf>).
- Secretary for Local Government, Government of Malawi, 4 Sept 2007, memo.
- Stanley, J., Kalembe, C., Komatsu, H., Ligomeka, S., Shotton, R., and Wekwete, K. (2001) 'Malawi on the Move: Concept Paper on the Re-orientation of UNDP and UNCDF support to the Malawi Decentralization Process (2002-2006)'. Local Governance and Development Management Programme, Lilongwe: UNDP and UNCDF, October/November (available at: www.uncdf.org/english/local_development/uploads/concept/MLW97C01_MCP.pdf).
- The Nation* (2008), 'Malawi could turn into a big slum', citing John Chome, UN Habitat, 2 Oct.
- Vail, Leroy and White, Landeg (1989) 'Tribalism in the Political History of Malawi', in Leroy Vail (ed.) *The Creation of Tribalism in Southern Africa*. Berkeley: University of California Press.
- Van Breugal, J. W. M. (2001) *Chewa Traditional Religion*. Kachere Monograph No. 13. Zomba: Kachere Series.
- Van Donge, Jan Kees with Pherani, Levi (1999) 'Law and Order as a Development Issue: Land Conflicts and the Creation of Social Order in Southern Malawi', *Journal of Development Studies* 36 (2): 48-70.
- Williams, T. David (1978) *Malawi: The Politics of Despair*. Ithaca, NY: Cornell UP.
- Zomba Municipal Assembly (2007) 'Zomba Municipality: Urban Development Plan, 2007-2012'. Zomba: Zomba City Council.

Annex 1: Town, city and district populations, 2002

Balaka	238800
Balaka Town	14298
Blantyre	307344
Blantyre City	502053
Chikwawa	356682
Chiradzulu	236050
Chitipa	126799
Dedza	471274
Dedza Town	15408
Dowa	411387
Karonga	166761
Karonga Town	27811
Kasungu	452905
Kasungu Town	27754
Likoma Island	8074
Lilongwe	905889
Lilongwe City	440000
Liwonde Town	15701
Luchenza Town	8842
Machinga	353913
Mangochi	583669
Mangochi Town	26570
Mchinji	324941
Mulanje	428322
Mwanza	138015
Mzimba	524014
Mzuzu City	86980
Nkhata Bay	164761
Nkhotakota	229460
Nsanje	194924
Ntcheu	370757
Ntchisi	167880
Phalombe	231990
Rumphi	128360
Salima	227859
Salima Town	20355
Thyolo	450134
Zomba	480746
Zomba Municipality	65915

Source: Malawi Decentralisation Secretariat,
<http://www.decentralisation-malawi.org.mw/assemblies.htm>

Annex 2: Distribution of Assemblies (ca 2006)

Region	Population				% rural
	Districts	Cities	Townships		
Northern	6	1	1	1,233,560	87
Central	9	1	3	4,066,340	86
Southern	12	2	4	4,633,968	85
Total	27	4	8	9,933.868	86

Source: Commonwealth Local Government Forum (www.clgf.org.uk).

Annex 3: Contemporary chiefs: *de jure* and *de facto* authority and roles

This annex summarises the *de jure* and, where available material allows,⁸⁰ the *de facto* authority and role of chiefs in Malawi today. To facilitate comparison, this is organised around the six categories of the functions fulfilled by town chiefs, as identified during the fieldwork and discussed in Section 3.

A3.1 Cultural Affairs

Legal framework

The 1994 Constitution recognises that all Malawians have the ‘right to use the language and to participate in the cultural life of his or her choice’ (Sec. 26). This imposes an obligation on the state to facilitate the enjoyment of cultural rights, including by not interfering with cultural institutions. The Constitution also recognises customary law as valid law, except where this is inconsistent with the Constitution (Sec. 200). These two provisions do not mention chiefs, but they implicitly support their position because of chiefs’ role within cultural institutions and the recognition of their authority in customary law. Their authority with respect to cultural affairs is also given legal status in the 1967 Chiefs Act, which recognises their religious and cultural functions and their administration of customary law.

By recognising the legal validity of customary marriages, the Marriage Act (1903) also implicitly recognises the authority of traditional leaders in the institution. However, it is notable that, despite the obvious connection between family and traditions, the National Family Welfare Council Act (1990) does not give chiefs any role in the work of the Council.

Practice

Chiefs have significant authority in this sphere as cultural affairs are heavily influenced by custom, and chiefs are central to the customary law and practice of all Malawi’s main ethnic groups,⁸¹ historically and today. Customary law or norms give rise to chiefs’ temporal/material (e.g. relating to succession, land or justice) and spiritual (e.g. relating to rituals and beliefs) power. Customary law is ‘living law’, however, and therefore not uniform, consistent or assured. In addition, Malawi has several ethno-linguistic and cultural groupings. These share customs, but also exhibit important differences (e.g. their kinships systems (matrilineal, patrilineal, bilineal), political organisation, life-cycle rites, etc.), with implications for the authority and role of their chiefs (Poeschke and Chirwa, 1999). Chewa linguistic and institutional dominance has resulted from Dr Banda’s nationalist vision.

It is difficult to make generalisations about chiefs’ *de facto* authority according to customary law and practice, particularly given the paucity of recent ethnographic work and reviews of customary law, which was last partially codified in the 1960s (Ibik, 1970). However, it is possible to say that Malawians have a vibrant cultural life incorporating various rites of passage, rituals and celebrations, and spiritual cults, and that chiefs have an important and

⁸⁰ Chiefs in the multiparty era do not appear to have been the focus of much research – with Jentsch (2005), Poeschke and Chirwa (1998) and, less recently, NDI (1995) as exceptions – and it is therefore difficult to elaborate the actual configuration of power, interests and norms that influence their authority and roles in practice. Research that deals indirectly with chiefs does exist, and has been used here, but a more comprehensive picture using ethnographic field methods is needed.

⁸¹ These are the Tonga, Tumbuka, Ngoni and Ngonde (Northern Region); Chewa and Ngoni (Central Region) and Yao, Mang’anja, and Lomwe (Southern Region). Note that the region designates where these groups *mainly* reside and excludes the large urban settlements, such as Lilongwe, and large migrant populations on estates.

recognised function within this. It is also reasonable to assume that this will continue to be the case for some time, as Malawi's population will remain predominantly rural for several more decades. Much of the hinterland remains isolated, and the mainly subsistence-level farming communities have little access to media other than government-run radio. Even basic education is scarce, so influences from outside Malawi are few. Of course, as suggested in this paper, the twin forces of urbanisation and democratisation will drive change, but studies of peri-urban areas suggest that people will continue to be 'translocal' and rooted in their rural villages for some time to come.

A3.2 Administration

Legal framework

The 1967 Chiefs Act makes chiefs part of the executive branch of government and assistants to District Commissioners and their offices (in fact the Chiefs Act primarily designates the role of chiefs as being bureaucratic adjuncts of the district). Their specific duties include the preservation of peace, assisting in general district administration and carrying out the DC's directions (see p.14 above). However, no other legislation specifies administrative duties for chiefs, for instance the Births and Deaths Registration Act (1904) places the duty to give information to the DC on family members.⁸² The Decentralisation Policy (2000) and Local Government Act (1998) largely sideline the chiefs to advisory or *ex officio* roles.

Practice

Since DANO (1912) chiefs have been continually recognised as an arm of the executive in statute and practice. At various times in the past, chiefs have also been given other state-sponsored duties, including the power to make local laws and adjudicate criminal (statutory) cases. But their responsibility for assisting the DC in his executive and administrative duties has been a constant feature of their authority as state agents. Chiefs fulfil their administrative duties by, *inter alia*, providing the DC with information about crime, demographic changes, local needs or priorities, and development and relief activities, and they perform their executive duties by helping to enforce government orders and policy. As a result, chiefs and DCs have a close working relationship that is well established historically, and chiefs cite assisting the government of the day as one of their main tasks alongside their customary functions (NDI, 1995). The presence of new leaders with democratic authority (e.g. MPs and temporarily, local councillors) has led to some duplication of responsibilities, a situation accentuated by the *de jure* vagueness of the chiefs' administrative role. But it is widely recognised that chiefs are closest to the rural population because they live among them. Chiefs are therefore the first port of call for any external agency (whether this is state, faith-based or NGO/donor) wanting to get things done in rural areas.

A3.3 Land and property

Legal framework

The 1967 Chiefs Act (Sec. 3(5)) states that the Paramount Chiefs, Chiefs and Sub-chiefs have no jurisdiction in cities, municipalities or townships, except with written approval of local government. This contradicts both the Land Act (1965: Section 26), which gives chiefs the

⁸² All births and deaths are likely to be reported to chiefs by family members as a matter of tradition and custom. The law could have capitalised on this and facilitated more accurate population statistics if it had placed an obligation on chiefs to report this to the DC. Now being piloted is a new process which sees chiefs keeping formal population registers.

power to allocate customary land for occupation and use, and the Town and Country Planning Act (1991: Sec 33), which establishes that the declaration of a planning area does not oust chiefs' power over customary land, which they have without qualification under the Land Act. This means that customary land remains customary land, and therefore under the authority of the chief, *unless* it is specifically converted into public or private land under the provisions of the Land Act. Similarly, the declaration of a local government area in towns and cities (Local Government Act, 1998) does not automatically alter land ownership. The important change to authority over land that *was* introduced by the Town and Country Planning Act is that, once an area is designated as a Planning Area, chiefs are obliged to apply for planning permission for any developments on urban customary land, which could be interpreted as interference with chiefs' control of customary land.⁸³

The Customary Land (Development) Act (1967) provides for the declaration by government of development schemes on customary lands. Once an area is declared to be subject to the Act, chiefs lose power to exercise any customary functions and the right to be paid for such functions. Note that the declaration of customary land development schemes is *not* the same as the declaration of a Planning Area (as governed by the Town and Country Planning Act). Finally, it should also be noted that legal ownership of customary land is vested in the state and the government can convert customary land into private or public land without the consent of a chief.

Other legislation relating to chiefs' authority over land include the Courts Act (1958) which states subordinate courts (which include traditional courts established by the Constitution) are prohibited from resolving land ownership disputes (see below regarding the current status of traditional courts), and the Local Land Boards Act (1967), under which chiefs have the power to appoint some members of the Local Land Boards (LLB) in their areas. LLBs operate in a limited number of areas (mostly outside the urban centres). They essentially advise the Minister regarding the giving of consent for land transactions

It is also noteworthy that the only power of chiefs that is preserved by the Town and Country Planning Act is that over allocation of land. Silence by the Act on other aspects of a chiefs' jurisdiction (e.g. non-land conflicts) permits, by default, Section 3 (5) of Chiefs Act to prevail, that is, that 'chiefs have no jurisdiction'. By design or default, however, the Chiefs Act only covers Paramount Chiefs, Chiefs and Sub-Chiefs, arguably leaving the customary authority of Village Headmen and Group Village Headmen unaffected by section 3(5).

Practice

A legislative conflict therefore exists with regard to chiefs' authority in urban areas arising from the contradictory provisions in the Chiefs Act and Town and Country Planning Act; one that has translated into jurisdictional disputes on the ground. Urban authorities tend to hold that chiefs have no jurisdiction over land in their areas, but the Town and Country Planning Act establishes otherwise. As this is the more recent legislation, the general legal rule of interpretation would hold that it would prevail. In any case, in resolving statutory ambiguities or conflicts, courts would be likely to prefer the position in the Town and Country Planning Act. The alternative interpretation would create a lacuna; government could not have jurisdiction because it is not public land. Another source of conflict in urban areas, and one not governed by legislation, is where 'officially unrecognised traditional leaders [such as unrecognised town chiefs] distribute and develop land' (Jentzsch, 2005: 16), largely due to the weakness of local authorities over land planning and development.

⁸³ As discussed in Section 3, this directly contradicts the view of the local state officials interviewed and as expressed in various Assembly documents, which suggests that there is a widespread view amongst urban authorities that chiefs have no jurisdiction in urban areas, and more research is therefore needed to clarify this situation.

Regardless of the legality of chiefs' control of land in urban areas, in practice chiefs continue to exist in towns and to allocate land and use of gardens. This is particularly the case when an area has been declared a Town Planning Area but the town authorities have not begun development activities. It is at the point when local government begins to survey land in an area previously designated a Town Planning Area that conflicts most often arise. Several people may then lay claim to a single piece of land because, for instance, the original occupants (who may even have already been compensated) or the chief (who does not receive compensation unless it is his personal land/gardens rather than communal land he is holding in trust for the community) has sold the land. The land may even have been sold on again by the buyer, who may or may not realise that the transaction was illegal, to offload it before authorities move in (Khaila, 10 March 2009; Mwandira and Nyirenda, 23 March 2009).

In rural areas, the authority of chiefs to allocate land for occupation and use is well established and is a fundamental source of chiefs' customary power. Three developments – one environmental, one political, and another economic – may challenge this authority in practice in the future. Firstly, land pressure is immense in Malawi, particularly in the South and Centre, and most land is in constant use. This in practice reduces the authority of chiefs, since by custom their authority is to allocate land that is not already in use, and means that control of land has essentially passed to family heads, who, also by custom, have the authority to reallocate land within their families.⁸⁴ As a consequence of both land pressure and uncertainty about the reallocation of land, contestation over land is on the increase – often recast as conflict between 'original settlers' and 'strangers' – with chiefs and custom being increasingly utilised in the process (Peters and Kambewa, 2007; van Donge, 1999; Cammack, 2001). The reduction in their power to allocate land may therefore be offset by a gain in power in terms of their being a fundamental player in the escalating number of land disputes, *if they have the authority to adjudicate such cases.*

Secondly, in 2002, the government introduced the National Land Policy, which suggests changes to land ownership and management. The policy proposes, *inter alia*, that the authority to allocate and resolve disputes regarding customary land should be transferred from chiefs to an elected Customary Land Committee, and that 'all land transactions have to be recorded and cultural inheritance laws have to be rendered gender sensitive' (Jentzsch, 2005: 16). It also proposes that land titles be given to family units. There has been no new Land Act to give this policy *de jure* status, though some of the recommendations have been extracted and enacted as specific amendments of the old law.⁸⁵ There would obviously be far-reaching implications for both chiefs' authority over land and customary law governing land ownership and inheritance if other recommendations were to become law.

Thirdly, as suggested above, urbanisation is eroding chiefs' control of land. Many District Assemblies are applying for urban settlements in rural areas to be declared Town Planning Areas, some, as in Rumphi District HQ/urban area, in anticipation of applying for formal town status. Apparently a rural area (i.e. one that is recognised as being customary land under chiefs authority) can only be declared a Town Planning Area with the permission of the chief and his affected subjects (it is not yet clear what the exact formal and informal processes are by which such approval can be elicited but apparently chiefs can and do refuse) (Mwandira

⁸⁴ One informant told us that it was practically impossible for a chief to confiscate or reallocate land that was in constant use by a family, and this is one reason why families who move from village to town ensure that they continue to cultivate the land annually (Khaila, 10 March 2009). However, in the North, one chief said that, even though all the land in his jurisdiction was allocated, it was possible for him to find land for reallocation (and it was unclear how consensual such a process would be).

⁸⁵ An example is the provision that requires that no land can be sold to a non-Malawian unless the land is first offered to Malawians. This was affected by a specific Amendment of the Land Act (1967) and is based on the specific aspect of the Land Policy that sets out to restrict land ownership by non-Malawians.

and Nyirenda, 23 March 2009). Some senior chiefs appear to accept the inevitability of urbanisation, and chiefs are approving Town Planning Areas, though they may lament a previous decision to do so (Kyungu, 20 March 2009) and may, as in the case of Paramount Chief Chikulamayembe, minimise the impact in the short term by opting for its application to only a portion of their land (Chikulamayembe, 23 March 2004). Regardless of such strategies, it appears that the trend is running irrevocably in the direction of the conversion of customary to public land. In 1983, Malawi had 7,459,278 hectares of customary land, while the sizes of public, freehold and leasehold land were 1,640,594, 52,058 and 296,811 hectares respectively (Malawi Government, 1999:9) . By 1989, the total amount of customary land had been reduced to 7,384,484 hectares, while that of public land, freehold and leasehold had increased to 1,655,961, 53,903 and 355,492 hectares respectively (*ibid.*). By 1997, the size of customary land had reportedly fallen further to 6,200,000 hectares (Government of Malawi, 1997).

A3.4 *Justice and order*

Legal framework⁸⁶

Based on pre-colonial practices that were modified by the colonial regime, the Traditional Courts Act (1969) revamped the system of traditional courts, which were thereafter used to try Banda's opponents using a 'Malawian sense of justice' (Africa Watch, 1990). The Attorney General suspended the operation of these Courts during the transition, pending statutory review, a move that effectively abolished the courts. The Constitution (1994: Sec. 110(3)) makes provision for the establishment of formal 'traditional courts' headed by chiefs or lay persons, subordinate to the High Court, and with jurisdiction limited exclusively to civil cases of customary law and such minor common law and statutory civil cases as prescribed by an Act of Parliament. The Law Commission has recommended legislation to regulate traditional courts, but none has been enacted. In theory, since the Traditional Courts Act has not been repealed, it could be re-activated at any time.

The Constitution (1994) establishes a judicial structure that includes subordinate courts, which are classified into three types: Magistrate Courts, Industrial Relations Court and Traditional/Local Courts. The Constitution provides that Traditional/Local Courts may be presided over by chiefs. In contrast to the position of traditional courts established under the Traditional Courts Act, the Traditional Courts established under the 1994 Constitution have the same constitutional status as Magistrates Courts. Despite their establishment by the Constitution, Traditional/Local Courts have not become operational in practice since the necessary enabling legislation which has been proposed by the Law Commission has not been enacted by Parliament. Until such legislation becomes operational, therefore, chiefs cannot and do not play any role within the formal judicial structure.

The Constitution (1994: Sec. 200) recognises customary law as valid law, except where this is inconsistent with the provisions of the Constitution.⁸⁷ Informal customary justice fora, presided over by chiefs and resolving disputes at clan, village and higher levels, have existed for centuries in Malawi and are thus well established in customary law. Note that these are *not* the same as the formal Traditional Courts, which, when operating, formed a parallel system to the informal customary justice fora, though some chiefs sat on both. These were also operationally separate from the courts modelled on the 'English' system, which applied

⁸⁶ See Kanyongolo (2006) for further detail.

⁸⁷ The Constitution fails to prescribe how to resolve conflicts between customary law and statutory law in practice. The two systems are allowed to co-exist and conflicts are resolved pragmatically by law officers and others at the micro-level by a creative combination of state law, customary law and common sense.

statutory laws, common law and principles of equity.⁸⁸ Although the informal justice fora do not have explicit *de jure* recognition, they can be said to draw their legal basis from the Constitution, which recognises customary law, and the Chiefs Act, which acknowledges the customary powers of chiefs, which has historically included customary judicial powers.

The Land Act (1965) does not recognise the role of chiefs in land dispute resolution whilst the 2002 National Land Policy proposes that chiefs be part of Dispute Resolution Committees, which include elected members. In urban areas, the Town and Country Planning Act gives the power to resolve planning disputes to Planning Committees. On customary land, this may be interpreted as a usurpation of the traditional power of chiefs to resolve all land disputes within their jurisdictions, which they assume to be inherent in their authority under customary law.

Practice⁸⁹

It is estimated that there are at least 24 000 informal customary justice fora in Malawi.⁹⁰ Most village headmen have a 'chief's court' (*bwalo* in the South and Centre and *mphala* in the North), which handles the majority of civil disputes as well as some minor criminal cases. These fora are the first port of call for poor Malawians because, not only are they the most accessible, but also custom dictates that all disputes are taken first to the chief, who, if unable to deal with the case, will then authorise it to be sent to the magistrate court. Variations in customary law exist but the format, style and rationale of these informal courts are similar, including: a 'relaxed and respectful atmosphere', usually outdoors; and the court being open to all and with a 'natural flow of story-telling and questioning'; that 'dispute is dealt with in a holistic manner, and taking into account interpersonal relationships, community status, local values and community perceptions'. Principles of restorative justice and the need to maintain social harmony govern such courts, and therefore 'pressure is used to reach an agreement that satisfies the parties, social hierarchy, community expectation and the chief'. Finally and importantly, 'a participatory or consensual approach to decision-making is adopted ... Chiefs seldom sit alone' but are instead assisted by their *nduna*. Chief usually allocate one day each week for handling cases (Schärf et al, 2002: 42).

There are few rules or processes in which the chiefs are held accountable for their dispute-settling activities, by their own followers or the authorities. In practice the *nduna* may be an important accountability mechanism, but this is at present anecdotal (e.g. the role of wise elders in advising, particularly younger chiefs on customary law or previous rulings) and the operation of the *nduna* in practice is something that will be investigated. The most frequent complaint made against chiefs is that, because of their poverty, they are susceptible to bribery, which can be difficult to distinguish from other 'tokens of thanks' (ibid.). Chiefs who are particularly troublesome will be reined in by their family, which is the custodian of the chieftaincy in general.

Although the chiefs' courts are separate from the magistrates' system, several factors link them in practice: magistrates may draw on chiefs as expert witnesses on customary law questions and magistrate's court officials liaise with them before serving court documents on villagers; magistrates refer cases back to chiefs over which they have no jurisdiction (e.g.

⁸⁸ Magistrates' courts had no power to administer customary law. That power was vested in both formal and informal traditional courts, and the power to hear appeals against their decisions was vested in the High Court. Through the exercise of this power, the High Court participated in judicialisation of customary law. However, in 1969, the power was transferred to district, regional and the national traditional courts and common law courts no longer had any role in the judicialisation of customary law or establishment of precedents. However, after the *de facto* abolition of the formal traditional court system in 1994 magistrates' courts and the High Court have been once again been empowered to apply customary law alongside statutes, common law and principles of equity.

⁸⁹ This section draws on Schärf et al. (2002) unless otherwise specified.

⁹⁰ Compare this with the 217 formal courts that existed in 2000.

land) and chiefs refer cases to the formal system (e.g. where they have failed to resolve a dispute or it is outside their jurisdiction); and the magistrate's court is used as a court of appeal by chiefs (ibid.: 27).⁹¹

Whilst, as argued, chiefs' authority to preside over their courts can be said to have statutory basis in the recognition of customary law, chiefs have no state-sanctioned powers to impose or enforce punishments (Kanyongolo, 2006). It is reported (e.g. by Schärf, et al., 2002: 39; NDI, 1995) that the impact of the abolition of the formal Traditional Courts is keenly felt by chiefs, who see it as an assault on their authority and their respect in general. They believe that the removal of their formal judicial functions is detrimental to their ability to maintain law and order and to have their judgements (including service orders) enforced. Their concern is heightened by what they regard as a general decline in respect for law, order and traditional authority since 1994 and wish to regain the ability to enforce their decisions, in order to maintain peace in their areas' (NDI, 1995).

A3.5 Politics

Legal framework

The law does not recognise or allocate a direct role for chiefs in politics. The Constitution (1994: Sec. 68b) included provision for a Senate, comprised of a 'Senator from each District, being a Chief registered as a voter in that District and elected by a caucus of all the Chiefs of that District', but this was repealed in 2001. At district level, the Local Government Act (1998) establishes chiefs (TAs and sub-TAs) as *ex officio* (i.e. non-voting members) of the District and Town/City Assemblies.

Practice

In practice, however, it is common knowledge that chiefs do play a critical role in politics at both local and national levels. Chiefs tend to say that they are politically neutral, working for government and not involving themselves in party politics, much in the same way as civil servants. The situation is much more ambiguous, however. Chiefs are partisan, because they represent the interests of their particular subjects, rather than of all Malawians. Furthermore, they tend not to distinguish between the government, to whom they are upwardly accountable (for approval of their position, their honoraria, etc.) and the party holding power (NDI, 1995). This means they are susceptible to political manipulation. Examples include the support garnered from chiefs for Muluzi's third term, use of chiefs in Section 65 debates,⁹² the creation of new chieftaincies by government, often in the run up to an election (e.g. Mutharika's creation of four new Paramount Chiefs since 2007), and, in the past, the use of

⁹¹ Note that magistrates do not have formal legal powers of appeal over decisions of chiefs and can only deal with any purported appeals as cases of first instance. Also note that Schärf et al (2002: 28) recommend that the links between formal and informal should be strengthened and 'the only thing that should be avoided is to swallow the informal into the formal because it will kill the positive attributes of the informal and just place another financial burden on the state. The informal system should be left to operate independently subject to the supervision of the Resident Magistrate ... The relationship between the magistrate and the chiefs will be akin to that presently enjoyed by the DC and the chiefs. This will not be strange because historically the DC doubled as a district magistrate'.

⁹² The *Malawi Nation* reported that Local Government Minister George Chononda said that chiefs were being funded by the Ministry to promote the importance of prioritising the budget, rather than Section 65, in Parliamentary discussion (i.e. to support the Government's rather than the Opposition's position). Senior Chief Kaomba denied this was partisan: 'I should have a problem if that money was from UDF but that's not the case. It's public funds and, as chiefs, we belong to government, we are part of government and have a role to play on behalf of our people' (31 November 2007, www.nationmw.net).

Traditional Courts to legitimise suppression of political dissent through the application of statutory laws (e.g. sedition, treason, etc.). Chiefs' ability to mobilise votes has also taken on new significance since the introduction of multiparty politics and, during election times, chiefs have been courted by politicians, sometimes appearing on platforms with them and endorsing their candidacies – though this behaviour is formally discouraged.

A3.6 Social and economic development

Legal framework

There is also little legislation relating to the role of chiefs in any aspect of public service provision or policy implementation generally. The Chiefs Act (1967) makes chiefs part of the executive branch of government, although it does not recognise chiefs' role in 'development and welfare'. The Constitution (1994) defines the role of the executive to include implementation of policy. By extension, therefore, chiefs do have a constitutional mandate to implement policy in this respect. Chiefs also have an obligation to implement policy by virtue of their duty under the Chiefs Act (1967) to enforce the directions of DCs. This can be an important function because the DC (and now the CEO) is so central to relief and development planning and implementation.

District and Town/City Assemblies have responsibility for formulating three-year development plans for their area (Local Government Act, 1998), though, since the postponement of Local Government elections in 2005, this responsibility has *de facto* passed back to the Secretariat, supported (but it is not clear to what degree) by the *ad hoc* 'Consultative Assemblies or Committees' comprising *ex-officio* members (TAs, MPs and special interest representatives). In addition, the Town and Country Planning Act (1991: Sec. 9) establishes that once an area is designated a Planning Area, responsibility for preparing development plans passes to a Planning Committee.

Practice

Chiefs are part of the development planning system through their role as *ex-officio* members of the Assemblies (when sitting) and through their involvement in the District Development Committee system. The Development Planning System Handbook for District Assemblies (OPC/MLGRD, 2001, cited in Jentzsch, 2005) advised that chiefs should not chair ADCs and prohibits them from chairing VDCs. In practice, chiefs remain centrally involved in the development committees, usually as chairmen. A 2004 Joint Government and Donor Review of Decentralisation found that 'chiefs have systematically been the key actors in facilitating the identification and selection of community needs, selecting project implementation committees, and mobilising communities for the implementation of community projects arising out of the decentralised planning system. In all these processes, chiefs have been at the forefront of organising community meetings and acting as a link between local communities and the area and village development committees ... which were mostly composed of chiefs and their traditional counsellors' (Chiweza: 2007: 68).⁹³

Whilst communities may be involved in project implementation, they are rarely involved in project identification and, in many meetings, 'chiefs focus on inculcating in community residents the importance of doing development work, or self-reliance, and of encouraging communities to take an active role in development activities by having bricks or some material ready in order to "attract" funding' (ibid.: 69). Chiefs' authority to do so stems from their position as both 'intermediaries and gatekeepers to the rural community' for actors

⁹³ The degree to which development committees are currently operational (e.g. holding regular meetings to formulate priorities rather than either responding *ad hoc* to external interventions or being primarily driven by external actors) is not clear (Nguluwe, 24 March 2009).

external to the community (state and non-state) (ibid.). This includes local councillors, who were given formal responsibilities for the development functions chiefs have historically undertaken, but, Chiweza notes, ‘the presence of councillors in the communities was not evident, except in a few cases’. This led residents ‘to believe that the development projects came into the community through the efforts of the chiefs, not the elected councillors’ (ibid.: 71). The relative authority of the chiefs vs. the local councillors was reinforced by ADCs and VDCs corresponding to the area of jurisdictions of chiefs rather than to the wards represented by councillors (Jentzsch, 2005).

It appears undeniable that chiefs are dominant in community decision making, but it must be remembered that their opportunity to influence government development policy and resource-allocation, beyond the project level, is itself limited and the DDCs have historically served as a mechanism for enforcing top-down policy and orders. Furthermore, all of this must be set within the context of the weak capacity (human and financial) of local government, the decline in professionalism within the civil service and the power vacuum and financial crisis that exist as a result of the postponement of local government elections. In other words, even if chiefs and their communities were able to partake in a genuine participatory development planning system, the state is too weak, dysfunctional or under-resourced to properly respond.

In relation to this, it is also worth noting the historical shift in the authority and responsibility of village chiefs with respect to the welfare of their subjects. Ideally, in pre-colonial Malawi chiefs were expected to ensure the well-being of their subjects, by providing security and safety-nets and, in return, they paid tribute to the chief, who embodied the community coffers. This material reciprocity was essential to the moral economy of village life, and therefore to mutual accountability relations. If the relationship broke down, people were inclined to move away under a new chief. Colonial relations that imposed new laws affecting the activities and powers of commoners and chiefs changed this relationship. The nationalist project undertaken by Dr Banda changed the relationship between chief and villager even more. Multi-partyism has both augmented and detracted from chiefs’ authority in ways that are still unfolding. The bottom line is that contemporary Malawian chiefs do not have the material means or political powers (e.g., to wage war or sell slaves) to provide for the economic welfare of their subjects. Most are also poor; they receive a small honorarium, obtain little ‘tribute’, and, unlike chiefs in other countries, most do not appear to have enriched themselves selling off customary land (Peters and Kambewa, 2007). As the chiefs’ ability to provide for their communities declined, people have turned to the state, donors and NGOs for the delivery of public services and goods, though again with limited success. Chiefs do, though, play a role here, helping to identify (‘target’) beneficiaries of food aid and agricultural inputs for instance.

A dependency mentality has been reinforced by the experience of the one party state – which undermined bottom-up initiatives and voluntary self-reliance at all levels – and of democratisation, which many informants suggest has prioritised ‘freedoms’ over ‘responsibilities’. In any event, this process has meant that the chiefs’ ‘development’ role is now mostly limited to intermediation and mobilisation.

In this sense it is easier for them to contribute to public goods that rely less on significant state support or regulation. For instance, they may be able to play a role in ensuring the maintenance and management of communal resources (e.g. upkeep of roads and boreholes, enforcement of sanitation rules, management of forest, water or land resources, supplying infrastructure, etc.).⁹⁴ The provision of these public goods is still dependent on state coordination, but requires much less government intervention than the provision of expertise

⁹⁴ Though it is not clear that some of these activities aren’t also influenced by a dependency mentality. For instance, whilst most chiefs claimed that they mobilised the community to clear the roads once a year after the rains, many also suggested that the roads were primarily the responsibility of the District or Town Assembly.

in health, education, security, etc. The degree to which chiefs contribute to this end requires further research, to be done through the APPP, but some suggest that there is a 'village civil society', existing outside of formal civic organisations or state structures and 'bound together by traditional authority' (NDI, 1995) and that the success of such community organisations depends on giving communities a degree of autonomy and appropriate state support whilst providing chiefs with the authority to make and enforce decisions (Kayambazinthu, 2000).

Annex 4: People interviewed

Date	Name(s)	Organisation/Status
2008		
22/9 Monday	Mr Malumbo Mkandawire, Community Development Officer and Mr Chikhadwe Mbewe, Director of Administration	Lilongwe City Assembly, City Centre, Lilongwe Mkandawire
23/9 Tuesday	Hon Nancy Tembo, MP (MCP) (= J Tembo's daughter in law) Hon Gertrude Nya-Mkandawire, MP (DPP, ex Petra) Dr Naomi Ngwira, Mr Samson Lembani (studying MPs and community associations) Ms Estele Vidal and	MP Lilongwe City Southwest (Biwi/Kwale) Mzimba Solola Constituency Director Debt and Aid, M of Finance, Lilongwe National Coordinator, Konrad Adenaur Stiftung, Lilongwe Trocaire, Lilongwe
24/9 Weds	Mr David Smith, director Mr Stuart Foster & Ms Dorothy DeGabrielle, re. primary justice programme Senior Group VH Mr Johani Chisenga & GVH Mr Maliko Chananga Senior Chief Mazengera (aka Mr Abraham Kaliveni Chomwetera)	DFID Governance, Lilongwe Mchesi township, near Kuwale, Lilongwe Ntenje River South area, 6 km off M-1 (met at Cresta Hotel Lilongwe)
25/9 Thurs	Mr Liford Mgunda Mr P Jimusole	Ntchisi CEO (DC) Director of Planning and Development, Ntchisi
26/9 Friday	Kasungu Town Assembly 1. Mr Toby Solomon, CEO 2. Abukakr Nkhoma, Director of Planning and Development Mr Victor Chagwira Mr Luckie Sikwese (previously in	Kasungu Town Assembly Senior Block leader, Kasungu at Kasalinga Plots, Kasungu (Senior Chief Kaomba area) (met at Kasungu town assembly) Deputy Secretary,

Date	Name(s)	Organisation/Status
27/9 Saturday	Decentralisation Secretariat and MLGRD), OPC, Lilongwe Mr Rob Jamieson, Publisher/UDF MP candidate, Lilongwe	Public Sector Reforms, OPC, Lilongwe MP Candidate (UDF) Lilongwe West (old Lilongwe airport area) (met at Cresta hotel) NICE official, 3 TC & 1 traditional chief
29/9 Monday	Dowa NICE: 1. Vincent Benjera, District Civic Ed Officer, Nice 2. Samuel Clement Phiri, GVH Zikometsa, Down Boma 3. Nixon Phiri, GVH Umbobo Mponela urban 4. Bernard Kalimanjira GVH (hereditary) Masamani, Madisi trading centre 5. Henry Chitete Bana, Senior VH, Lumbadzi Township (near LL airport) Hastings Bota	Desk Officer, Decentralisation, M of LG Town Assembly secretariat CEO and planner NICE Officer, Dedza 3 Balaka chiefs (organised by NICE)
30/9 Tuesday	Town Assembly, Dedza 1. Lusizi Nhlane, CEO Dedza 2. Newton Munthali, Director Planning, Town Assembly Charles Nzunga	Town Assembly secretariat CEO and planner NICE Officer, Dedza 3 Balaka chiefs (organised by NICE)
2/10 Thurs	1. GVH Matola, hereditary chief outside town (Matola village) 2. VH Nkomba, Balaka south (woman appted hereditary chief by UDF) outside town 3. VH Kandengwe, Town centre VH (hereditary but not paid/recognised) 4. NICE Officer, Daniel Kataya	3 Balaka chiefs (organised by NICE)
2/10 Thurs	Balaka Town Assembly officers 1. Hankey Pangen, Town planning ranger 2. Prince Kasia, Planning technician 3. Mizack Zisikwa, Lands Clerk 4. David Ziyadi, Estate ranger 5. Manueno Sayenda, Town ranger	6 town officials
6/10 Monday	1. Rafiq Hajat, IPI, Limbe	Political scientist
7/10 Tues	Blantyre Maps Office Blantyre City Assembly 1. Lester Bandawe, Acting CEO 2. Robert Kawiya, Dir Leisure, Culture and Environment 3. Kenneth Kantwela, Dir Engineering Services 4. Costly Chanza, Dir Town Planning & Estate Services 5. Alick Mphande, Dir Finance & GVH Mbiwi (Lilongwe)	City Assembly officials
8/10 Weds	District Assembly Chikwawa 1. Lovemore Chitawo, Dir Admin 2. Gerald Mabreka, Lands Officer	District Assembly officials

Date	Name(s)	Organisation/Status
9/10 Thurs	Hanson Chigamula, Sibanyi, Blantyre National Statistical Office, Zomba	Town Chief
	Zomba City Assembly 1. Fred Nankuyu, Acting CEO (Assist Dir Planning & Development) 2. Martin Kazembe, Dir Parks, Recreation, Environment 3. Mussa Mwali, Human Resources manager 4. Isaac Mkandawire, Ass. Dir Finance 5. Godezanani Nyasulu, Ass. Dir Health 6. Martin Kumbani, Dir Engineering Service	City Assembly officials
13/10 Mon	Grace Kamwendo, Ndola community member (Secretary Dept Philosophy, Chancellor College)	Zomba resident
	Dr Wiseman Chirwa, Dept History, Chancellor College	Social researcher
	Blessing Chinsinga, Political Science, Chancellor College	Researcher
14/10 Tues	Michael Ndazipere Dorothy Jimu,	Town chief, Zomba UDF primary candidate/ ex-local councillor, Zomba, Likangala Ward
	Ali, community member, Zomba	Community member
15/10 Wed	Sudi Sulaimana	MP Primary candidate, DPP
	VH Kazembe (Chikanda area) Zomba & 1. Elizabeth Chikaonda, <i>Nduna</i> 2. Nyson Pondabwino, <i>Nduna</i> 3. Sampson Botomani, <i>Nduna</i> 4. Isaac Koplani, <i>Nduna</i> 5. Andrew Robert, Community member	Town chief & <i>Nduna</i>
	VH Ndelemani, Amai Ndelemani & Nephew, Chinamwali, Zomba	Town chief & family
	Focus Group Mwandakale, Chinamwali, Zomba 1. Charles Chitekwere, businessman 2. Frank Bakali 3. Senia Bondo, student 4. Chrissy Kuweluka, business woman 5. Ida Bunaya, business woman 6. Alice Kadavzila, business woman 7. Pilirani Phiri, business woman 8. George Kamoto, 9. Kumbukani Bunaya, Planet world 10. Francis Makaiya, Planet world	Focus group community members

Date	Name(s)	Organisation/Status
<i>16/10 Thurs</i>	Mustapha Hussain, Chanco Ambitious Sawire Gondwe, Linley Blessing Mhango & Robson Mateketa	Pasmalo Security Services guards (all ex-MYP & army)
	Joseph Nankwenya	Ndola, Zomba TC
	John Malanjeza	District Planning Director, Zomba
<i>17/10 Fri</i>	VH Mwendakali & Michael Mwendakali Clemence Alfazema	Acting TC and son/heir, Chinamwali CCJP, Coordinator Zomba Diocese
	Raphael Yusuf	CCJP, Field Officer, ZA Diocese
	Emma Kandako	Admin. Asst.
<i>2009</i>		
<i>9/3 Mon</i>	Mr Kaphaizi	PS II, Min of Local Govt, Lilongwe
	Mr Lende	Head of Chiefs Affairs, MLGRD, Lilongwe
	Alison Mbang'ombe, Mike Chinoko, and Austin Msoya	Law Commission, Lilongwe
<i>10/3 Tues</i>	Stanley Khalia	Lecturer, Bunda College
	Charles Nkhoma Mziya	Village Headman, Mzuzu
	Chiyava Nyoni and Elliot Manderu	Town chiefs, Mzuzu (GVH and VH)
<i>11/3 Weds</i>	Amon Chalimba, Henry Nkhata, Mr Chigaya, James Tembo	Mzimba District Office: Dir Public Works, Dir Information, District Intelligence Officer, Director of Administration
	WT Kaunda	Town Chief, Mzimba
	January Mbae and Julius Mbale	Town Chief, Mzimba and son
<i>19/3 Thurs</i>	NICE meeting of community leaders	Karonga
	Rex Mwambuli Mwanyangolo	VH of Mwambuli village, Karonga town
	Paramount Chief Kiyungu = Lucky Mwanyangolo	Paramount of the Ngonde
<i>20/3 Fri</i>	Lowfat Mwachimba	Principle GVH in Karonga town
<i>23/3 Mon</i>	Dominic Mwandira and Mr Nyirenda	Dir Administration and Supervisor, Registry Office, DC's office, Rumphi District

Date	Name(s)	Organisation/Status
	Jayeka Mbale and Mlongoti Zgambo	GVH at Jayeka village and Principal GVH at Mlongoti (central Rumphu)
	Paramount Chief Chikulamayembe	Paramount chief of the Tumbuka, Bolero, Rumphu
<i>24/3 Tues</i>	Mrs Nyrongo and Mr H Gondwe	Mzimba District sub-office in Mzuzu: Senior Local Govt Officer and Senior Clerical officer/GVH, Bolero, Rumphu
	Victor Masina and Christopher Phiri	Director of Administration and Human Resources officer, Mzuzu Town Secretariat
<i>25/3 Weds</i>	Jack Nguluwe	District Commissioner, Nkhata Bay
	TA Malanta	Nkhata Bay District