



Knowledge Innovation and Excellence

District Level Land Dialogue Report

District Level Stakeholders' Understanding of the Current Land Customary Context, the Customary Land Act (2016) and their Desired Future in Chikwawa District

By

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Sustainable Agricultural Intensification Research and Learning in Africa (SAIRLA) is a five-year, DFID-funded programme (2015–2020) seeking to generate new evidence and design tools to enable governments, investors and other key actors to deliver more effective policies and investments in sustainable agricultural intensification. The programme covers six countries in sub-Saharan Africa – Burkina Faso, Ghana, Ethiopia, Tanzania and Zambia.

Over the course of the programme, SAIRLA partners have generated new evidence and design tools to enable governments, investors and other key actors that are supporting agriculture commercialisation and intensification to deliver more effective policies and investments. As part of this work, SAIRLA supports eight research projects that have successfully generated new evidence, and five national learning alliances that have been established to channel high quality evidence into national investment and policy making processes using a social learning approach.

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1. Introduction

This report is the result of the dialogue sessions on the Malawi Customary Land Act, 2016 held by the Facilitation Team of the Malawi National Learning Alliance (NLA) with various stakeholders. The stakeholders have discussed different contestations and generated common understanding on customary land in order to contribute to the development of a land legislative and governance framework that enables more equitable outcomes among the various stakeholders. The aims of the dialogue sessions are:

- i. To provide evidence for and illustrate the complexity of the land situation and reforms in Malawi.
- ii. Make the case that this complexity cannot be dealt with in a linear way but needs to be considered within an open and transparent multi-stakeholder dialogue.

The specific objectives for the dialogue mediated by the NLA are:

- To give stakeholders a platform to share views, perceptions, fears and hopes regarding the Customary Land Act, 2016.
- To enable stakeholders to better understand each other's voice, views, perceptions, fears and hopes about Customary Land Act, 2016 as a basis for generating consensus for developing a mutually acceptable land legislative and governance framework
- Identify opportunities and means to enhance future dialogues

The specific expected outcomes of the dialogue sessions include:

- Contextual situation and issues regarding access, control and tenure security over customary land, stakeholder agreements and disagreement identified.
- The desired future regarding the situation with customary land, stakeholder agreements and disagreements identified.
- Stakeholders' perspectives on Customary Land Act, 2016 and the extent to which it addresses current and future situations and aspirations identified.
- Possible pathways towards resolving the land contests and issues that stand in the way of a mutually acceptable land legislative and governance identified.

2. Background to the dialogue process

In Malawi the NLA Facilitation Team embarked on dialogue sessions on customary land as part of the programme on Sustainable Agricultural Intensification Research and Learning in Africa (SAIRLA) funded by the UK Department for International Development (DFID). The programme has grown out of the global challenge for agriculture in which production must increase to meet the food and nutritional security demands of a growing population, but do so in a sustainable fashion. The aim of the SAIRLA programme is to generate, share and facilitate use of knowledge by decision makers (policy makers and investors) to develop Sustainable Agricultural Intensification (SAI) in ways that enable poorer smallholders, particularly women and youth to participate in and benefit from agricultural development.

In Malawi the wind of SAI is blowing at a time when there is a drive to commercialise agriculture. The Malawi Government (GoM), with support from development partners, has embarked on an ambitious programme of transforming the agricultural sector. The ambitions are well spelt out in policy pronouncements such as the Malawi Growth Development Strategy (MGDS), National Agricultural Policy (NAP), National Export Strategy Paper (NESP) and the National Agricultural Investment Plan (NAIP). The common thread in these policy and investment strategy papers is that agriculture must be commercialised and productivity should be enhanced. Key in the policy aspirations is the need for clearly defined property land rights, land being a key resource for agricultural commercialisation. The Malawi Government has been engaged on land reforms since the late 1990s, and in 2016 enacted the Customary Land Act (CLA). Key issues dealt with by the CLA relate to land registration, land conflict resolution bodies, access to land (by women), security of tenure and land governance.

The NLA dialogue sessions on customary land draw on equity perspectives to construct evidence of what does and what doesn't work in relation to the propositions of the CLA. The CLA is critical because customary land remains the most important productive asset for the majority of Malawians. A high proportion of the land area in Malawi is managed by smallholders (between 65% and 75% is customary land according to Chirwa (2008), GoM (2008) and GoM (2002), although this situation appears to be rapidly changing (Jayne, *et al.*, 2016)).

The dialogue sessions have been conducted through a multi-stakeholder platform for social learning processes called the National Learning Alliance (NLA) on SAI. The stakeholders are decision-makers with interest in and/ or influence on equitable SAI. They are at local, district and national levels and they include government, non-governmental organisations (NGOs), academia, media, research, private sector, chiefs, women's groups, local development committees, and the youth. Through these dialogue sessions:

- different perspectives on customary land have been shared and discussed
- scenarios and options on customary land have been jointly assessed
- more inclusive /joint decision-making on customary land has been discussed
- capacity and commitment to act has been discussed.

3. The Customary Land Act (2016)

The customary land question in Malawi remains unresolved and it is complex. The regime has faced challenges including purported inherent insecure customary land rights. It is evident that Malawians are becoming concerned about the current land situation, particularly with respect to losing land to foreigners, although there is also a trend regarding acquisition of land by Malawian middle-scale land users (Jayne et al., 2016).

Efforts to formalise land rights started in colonial times with “certificates of claim” as an acceptable basis of occupation of land (The Land Ordinance, 1951). The Land Act (1967) superseded the Land Ordinance (1951) and provided for registration of title. In 1996, the Malawi Government steered comprehensive Land Policy Reforms through a Presidential Commission on Land Inquiry (PCLI) in recognition of land pressure and tenure insecurity. In 2016 a new Customary Land Act (CLA) was enacted by Parliament with the aim of formalising land ownership and governance. Despite these efforts, divided opinions and views still exist: some stakeholders have supported while others have resisted the new land legislative and governance framework.

3.1 On-going processes in relation to the Customary Land Act (2016)

Following the adoption of the National Land Policy (GoM, 2002) the Malawi Government embarked on reviewing, amending and developing new land and land related laws. The key provisions of the CLA focus on land registration, land conflict resolution bodies, land access (women rights), security of tenure, land governance and compensation.

The provisions of the CLA have been contested throughout this process: by some NGOs, tribal groupings and chiefs. Government of Malawi and some of its development partners have begun to implement the law with pilot projects delivered by civil society organisations (CSOs) in selected districts of Msimba, Kasungu, Phalombe, Chikwawa in awareness of this contestation. The pilot projects are intended to provide Government with evidence and lessons on how the CLA is working. Government and its partners intend to use the evidence and lessons to inform the implementation of the CLA in the rest of the country (Deputy Commissioner of Lands, personal communication, 2019).

3.2 Major, relevant and related provisions in the Customary Land Act (2016)

The major provisions of the CLA include the creation of Traditional Land Management Areas (TLMAs) and land registration in form of customary estates. The CLA provides for title registration throughout the country for all land categories including Customary Estates. All land shall be subject to registration for purposes of determination of ownership. This supersedes the Customary Land Act, 1965 which recognised land ownership according to customary arrangements. Some specific provisions of the CLA, which are particularly relevant to the dialogue work are set out in Box 1.

Box 1. Some relevant Customary Land Act provisions (original provision number has been retained)

4. Land committees shall, subject to the provisions of this Act, be responsible for the management of all customary land in a Traditional Land Management Area.
5. (1) There shall be established in each Traditional Land Management Area, customary' land committees at a group village headman level.
5. (2) A Land Committee shall consist of:
- a) A Group Village Headman who shall be the chairperson;
 - b) Six other persons elected by and from within the community, at least three of whom shall be women
8. (1) There shall be appointed a land clerk for each Traditional Land Management Area to serve as a secretary to any land committee appointed for the purposes of this Act.
20. (1) A customary estate shall be allocated by a land Customary committee
21. (1) A person, family unit, a group of persons recognised under customary law or who have formed themselves together as an association, a co-operative society or as any other body recognised by any written law, may apply to a land committee responsible for that land for the grant of a customary estate
24. (1) A land committee may require the payment of a fee on the grant of a customary' estate to an organisation or body.
26. A land committee may require the payment of annual rent for customary estates granted to an organisation or a body.
44. (1) There shall be established in every Traditional Land Management Area, a customary land tribunal to adjudicate on any disputes concerning customary land in the area.
- (2) A customary land tribunal shall consist of—
- a) A presiding chairperson who shall be the Traditional Authority responsible for the area; and
 - b) Six members of the community nominated by the Traditional Authority and approved by the Commissioner, at least three of whom shall be women
46. (1) There shall be established in every district, a district land tribunal which shall consist of the following—
- a) A presiding chair person who shall be the District Commissioner responsible for the District;
 - b) Up to three Traditional Authorities;
 - c) Three reputable persons that come from and reside in the district, two of whom shall be women, who shall be in office for a renewal term of three years; and
 - d) The District Land Registrar who shall be the secretary
48. (1) There shall be established a Central Land Board consisting of the following—
- a) Resident Magistrate who shall preside over proceedings of the Board;
 - b) Three Traditional Authorities, one from each region of Malawi, one of whom shall be a woman; and
 - c) Two other members with good standing in society, one of whom shall be a woman.

4. Methodology

4.1 Social characteristics related to land issues in the area

In Chikhwawa, the major tribes are Sena and Mang'anja and there is a mixture of patrilineal and matrilineal systems. While the matrilineal system used to be dominant, the patrilineal system is now more prevalent because the Mang'anja have adopted some

patrilineal practices of the Sena, such as women living in the natal villages of their husbands.

4.2 Major agricultural activities/projects in the area

Chikwawa has some big initiatives aimed at transforming the agriculture sector. These include the Shire Basin Project funded by the World Bank, the Illovo sugar processing company at Nchalo and large livestock ranches. The Lengwe National Park under African Parks is also an important user of land in the district. Generally, much of the land in the area is taken up by the sugar estate and the national park. Most of the smallholder farmers in the area grow cotton, rice, and sorghum.

4.3 Activities related to implementation of the CLA in the area

The implementation of the CLA is being piloted in Chikwawa district, in the area of Paramount Chief Lundu. According to the Paramount Chief, the traditional leaders have been briefed and the government has sent extra lands officers to lead the process of operationalising the CLA. The process to demarcate land boundaries for Traditional Land Management Areas has started but there are some disagreements, with chiefs refusing to take part because they cannot agree on boundaries.

There is also a pilot project in the district funded by the World Bank aimed at consolidating the land for agricultural commercialisation.

4.4 Description of the stakeholders consulted

The dialogue meeting took place on 29th November, 2018 at Chikwawa District Headquarters. Table 1 provides details of stakeholders consulted, and these included:

- Police and judiciary. These officers are important for settling land related disputes and conflicts.
- The District Executive Committee (DEC). These are decision makers at district level and they are influential in district decisions on rural development. Members provide technical input into district plans for development projects.

Table 1 Stakeholders consulted

Stakeholder group	Detail	Male	Female
Civil Society organisations and NGOs (DEC)	World Vision	1	0
	Catholic Relief Services	1	0
Law enforcers	Police	1	0
	Judiciary, a magistrate	1	0
Civil Servants (DEC)	District Social Welfare and Gender Office	2	1
	District Community Development Office	1	1
	District Lands Office	1	0

4.5 Method for district consultations

The Facilitation Team used a modified outcome mapping approach (OMA) to initiate a dialogue on the CLA. The stakeholders formed one group because there were relatively few participants. In the group the members reflected on the current situation of land themes – access/ownership, tenure security, and control for the poor, youth and women. The stakeholders then reflected on changes they would like to see in these themes in the next five to ten years. Finally, the group was asked to assess the implications of proposals in the CLA on access/ownership, tenure security and control by the poor, women and the youth. See Appendix 1 for the checklist that used for the focus group discussions (FGDs). After the FGDs, the group presented their discussions in plenary. Video and audio interviews were recorded as part of the process of generating evidence on how the CLA is envisaged to work on land access, land tenure security and access to land among women, men, youth and the chiefs.

5. Results of Focus Group Discussions

5.1 Consultations with DEC members

5.1.1 Awareness and knowledge about the customary land law

The DEC members reported that they had heard about the CLA) but they had not seen it. The DEC members revealed that the Department of Lands has just conducted awareness meetings about the law to DEC. Currently, the status of implementation of the CLA is that the proposed structures in the law are not yet established. The judiciary and police officers reported that they are failing to attend to land disputes and conflicts because they have heard that the CLA has stopped them from doing so. Instead land matters have to be handled by the tribunals and the high court.

5.1.2 The current situation of land issues – access/ownership, tenure security, control for the poor, youth and women

The DEC members indicated that Chikwawa has a mix of the matrilineal system of the Mang'anja and patrilineal system of the Sena people. In terms of access and ownership the Mang'anja inherit the land from the mother's side while the Sena inherit land from the father's side. In terms of marriage, in the Mang'anja societies a man lives in the village of his wife after getting married (*chikamwini*), while in the Sena societies the woman lives in the village of the husband after marriage (*chitengwa*). However, there have been changes among the Mang'anjas whereby it is now common to see a woman living in the village of the husband (*chitengwa*). This is the influence of the Sena tribe culture. In this regard, in Chikwawa the common practice is for men to inherit the land from their paternal parents.

Women living in *chitengwa* do not qualify to inherit land from their parents because they are expected to be 'married off'. They also do not qualify to inherit the land from their husbands. They only have the right to use the land. Only in some societies where the Mang'anja practice *chikamwini* do women inherit the land from their maternal parents. But men under *chikamwini* are complaining that they are being abused and they would prefer to take their wives *chitengwa*.

In terms of tenure security, the DEC members indicated that men in *chikamwini* have insecure tenure because their wives can chase them off the land after they have done the work to develop it. There are also situations where powerful chiefs grab the land from the

poor and sell. There are more complaints about tenure security because of the Lengwe National Park and Illovo sugar company. These companies occupy a large portion of land in the district. Some people lost their land to these companies without any compensation.

In terms of control over the land, the DEC members indicated that the chiefs are too powerful. The members feel that sometimes the chiefs abuse their powers to the extent that they can take away land from their subjects.

5.1.3 Changes would like to see in access/ownership, tenure security, control for the poor, youth and women in the next 5 to 10 years

The DEC members are not sure if anything could be done to reverse land ownership practices where both men and women have become victims. But the members would like and love to see that in the next 5 to 10 years all customary land is registered and that every person who has land has a title deed. The only concern is that the registration process might be difficult for the poor, women and orphans to afford. Some members feared that registering land will only favour the rich.

5.1.4 Implications of CLA provisions on access/ownership, tenure security and control by the poor, women and the youth

The DEC members cited the existing situation in the district which has resulted from failure by Government to implement the CLA nationwide. They indicated that they knew that the new law provides for establishment of Land Tribunals to be responsible for settling land disputes. However, these tribunals have not yet been established despite the law being already in force. In respecting and adhering to the law, the magistrates located in the communities have stopped hearing land cases. Victims of land grabbing are therefore being turned back at the courts, and told to go back to the tribunals, which do not exist. The result is that there exists a vacuum in the justice system.

During the same meeting the police indicated that they are receiving land-related cases at the victim support unit. But the police are not conclusive on the cases. They usually provide some awareness to the people on the new land law and refer them to the office of the District Commissioner.

5.2 Plenary discussion

The DEC members were concerned with the status of implementation of the law, especially some proposed structures such as Land Tribunals in the law which are not yet

established. This is creating a vacuum in the delivery of justice. What a good government should do is to bypass the pilot approach and implement the law to the whole country.

The most immediate need in the district is that there is need to communicate the law to the people. General awareness raising about the CLA is needed and, in particular, the steps and procedures that are required to ensure that the CLA is operational.

There is need to improve communication between the headquarters of the Ministry of Lands, Housing and Urban Development (MLHUD) and district level personnel.

The members of DEC emphasised the need for the Ministry of Lands to devolve its functions on customary land to the district level. It is also important that the Ministry establishes the structures proposed in the CLA.

5.3 Conclusions of Facilitation Team

5.3.1 Contextual situation and issues regarding access, control and tenure security over customary land, stakeholder agreements & disagreement

In Chikwawa access, control and tenure security are still culturally based. This situation has made both men and women victims as there are cases where women are losing land to their brothers, while for some time men did not own land.

5.3.2 Stakeholders' perspectives on Customary Land Act, 2016 and the extent to which it addresses current and future situations and aspirations

On the one hand the CLA is deemed to enhance access to land by both men and women through land registration. On the other hand, the CLA will disadvantage the poor men, women and orphans if the registration process will be difficult and unaffordable. Actually, the stakeholders feel registering land will only benefit the rich.

5.3.3 The desired future regarding the situation with customary land, stakeholder agreements & disagreements

The future of customary land relies on the registration of the land. It is therefore the wish of the DEC members to see all customary land registered. However, the registration process should be affordable to the poor, women and orphans.

5.3.4 Possible pathways for resolving the land contests and issues that stand in the way of a mutually acceptable land legislative and governance identified

The most immediate thing is for government to communicate the law to the people so that people should know the procedures to be taken to ensure that the CLA is operational.

6. References

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7. Appendix 1: Checklist for district and community stakeholder engagement meetings

Preamble

During the introductions with the community or district stakeholders explain the aim of the meetings and the methodology to be used. Split the community stakeholders into Focus Groups of youth, women, Area Development Committee and chiefs. District stakeholders should be split into civil servants, NGOs. Use the matrix here below to guide the discussions. Mention to the entire group that after the FGDs with the split groups, the results will be presented in plenary.

Key questions

Modified Outcome Mapping Matrix

Describe access to land over the timelines given in the tables below. For each change in access to land per respective group of people in the first column provide reason (s).

Access of land	Current situation	Next five years	Next 10 years	Future
Women				
Men				
Youth				
Chiefs				

Describe land tenure security over the timelines given in the tables below. For each change in land tenure security per respective group of people in the first column provide reason (s).

Land tenure security	Now	Next five years	Next 10 years	Future
Women				
Men				
Youth				
Chiefs				

Describe control over land over the timelines given in the tables below. For each changes or failure to change in control over land over per respective group of people in the first column provide reason (s).

Control over land	Now	Next five years	Next 10 years	Future
Women				
Men				
Youth				
Chiefs				