



Knowledge Innovation and Excellence

District Level Land Dialogue Report

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

By

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About SAIRLA - www.sairla-africa.org

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 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 recognized under customary law or who have formed themselves together as an association, a co-operative society or as any other body recognized 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 organization or body.

26. A land committee may require the payment of annual rent for customary estates granted to an organization 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.

44. (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

Kasungu is an important farming district with very large commercial farming enterprises. Attracted by its fertile soils, middle class working people from the capital city, Lilongwe,

are increasingly trekking to Kasungu in their large numbers, either renting or buying land to grow tobacco or engage in seed multiplication of maize, beans, or soybeans. Press Agriculture has huge chunks of idle land in its inactive estates in Kasungu. Kasungu also is an urbanising district with big towns and trading centres like Kasungu Boma, Ntunthama, Chatoloma and Nkhamenya. The demand for land for farming, commercial and residential construction purposes high. Kasungu district as a whole has both matrilineal and patrilineal systems of inheritance.

4.2 Major agricultural activities/projects in the area

Tobacco is the main crop grown in Kasungu as a cash crop. It is grown either under estates system owned by wealthy people or large corporations, or under small- scale farming by ordinary men and women of Kasungu. Apart from maize, legume crops like soybeans, common beans, and groundnuts are also grown.

4.3 Activities related to implementation of the CLA in the area

Kasungu is one of the pilot districts for the implementation of the CLA. As part of the piloting activities, Kasungu Lands office (in conjunction with LandNet) has sensitised chiefs, local development committees, and the youth in the area about the new Act. In addition, village customary land committees have been formed. However, the village land tribunals provided for under the CLA are yet to be constituted. In addition, boundary demarcations for traditional authorities in Kasungu are in process, with most chiefs refusing to sign for the new boundaries.

4.4 Description of the stakeholders consulted

The consultations took place on 7th September 2018 at the office of the District Commissioner (DC) in Kasungu. Table 1 provides details of the stakeholders consulted, and they included:

- Civil Servants in the DC's Office comprising officers from the following government departments
 - i. Lands
 - ii. Social Welfare and Gender
 - iii. Community Development
 - iv. Agriculture

v. Directorate of Planning and Development

- Law enforcers comprising Malawi Police and Malawi Judiciary
- Representatives of civil society organisations and other non-governmental organisations are members of the DEC but they formed a separate focus group for the purpose of this consultation as there were many DEC members.

Table 1 Stakeholders consulted

Stakeholder group	Detail	Male	Female
Civil Servants	Directorate of Planning and Development	1	0
	Ministry of Lands	1	0
	Social Welfare and Gender	1	2
	Community Development	1	1
	Ministry of Agriculture	2	1
Law enforcers	Malawi Police Services	1	0
	Malawi Judiciary	0	2
Civil Society organizations and NGOs	Civil Society organizations and NGOs operating in Kasungu like NICE	0	7

4.5 Method for district consultations

The Facilitation Team used a modified outcome mapping approach (OMA) to initiate a dialogue on CLA. The stakeholders were divided into focus groups of chiefs, women, and ADC to facilitate discussions. Each focus group was facilitated by two members of the Facilitation Team. In the groups, stakeholders 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 access/ownership, tenure security, control for the poor, youth and women in the next five to ten years. Finally,

the groups were asked to assess the implications of the CLA proposals for access/ownership, tenure security, and control by the poor, women and the youth. See Appendix 1 for the checklist that is used for the focus group discussions (FGDs). After the FGDs the groups presented their discussions in plenary, where members from other groups commented on each other's presentation. Video and audio interviews were recorded as part of the process of generating evidence on how the CLA is envisaged to impact 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 Civil Servants

5.1.1 Awareness and knowledge about the customary land law

Despite being oriented by LandNet Malawi on the CLA as members of Kasungu District Executive Committee (DEC), only 40% of the participating civil servants confessed to have knowledge of the contents of the new Act. However, every participant (100%) of the civil servant group who participated reported being aware that Malawi has a new customary land act which was enacted in 2016.

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

Starting with the theme of land tenure security, Kasungu government officers who participated in the dialogue meeting reported that there is a high incidence of land grabbing and other land-related disputes. Chiefs grab land from their subjects and use it for development without the consent of the owners. Married women under the patrilineal system are chased away from the land which they were cultivating when their husbands die. This demotivates women psychologically even before the husbands die: women still feel insecure and as a result cannot invest much in their husbands' land. However, for most women in Kasungu, this is the only means they have to access land. In this regard, to secure customary land tenure for women in particular and even for poor men and young people, the Kasungu district Civil Servants believe that the CLA is a panacea to the challenges of insecure land tenure in Kasungu. One of the participants said "*Land should be registered, and every land owner should have title deeds for their land. To protect women and children from land grabbers upon the death of husband, joint land registration*

should be encouraged by including the name of the wife, and the names of the children. This will ensure that the land is safe from being expropriated by powerful people or rich people.”

The district government technocrats, however, asked the government to simplify and reduce the steps that one has to follow in the process of registering land, arguing that the current process of registering land scares away the poor, less educated and other vulnerable members of the community who own land from registering their land.

On access to land, the following ways of accessing land were highlighted in their order of importance:

- i.** Inheriting land from parents – parents share their land with their children when the children reach adulthood and start their own independent lives. In this way, Kasungu has both matrilineal and patrilineal systems of inheritance.
- ii.** Sub-leasing land – people in Kasungu also access land by renting land from those that are willing to rent out land. In this regard, the civil servants noted that it is sad that ordinary people are being exploited because the rental prices are not regulated, with some paying as little as MK8,000 per acre per season while others are paying MK20,000 per acre per season. The technocrats said they would be happy if, in the next 5 years, land rental prices were standardised to prevent exploitation of poor and desperate farmers. They hope government will give the district land department the power to regulate and enforce rental prices.
- iii.** Buying Land – the district technocrats also reported that accessing land through buying is becoming more common. People working in Kasungu town and other trading centres (with government, NGOs, companies) are buying land for farming and residential settlement. In addition, foreigners like Burundians, because they have available funds, are buying most of the land from the locals in strategic trading centres or fertile agricultural areas. In this regard, one of the technocrats working in the civil service warned that if nothing is done, *‘Malawi will be sold to foreigners with money because currently they are easily buying most of the land. Locals even cannot compete with them because they have more money and are always willing to pay more for the same piece of land. We are really selling our country’*. It is the

civil servants' wish that government moves in to control the sale of land to Burundians and other foreigners. Strict and tight conditions will have to be put in place and which a foreigner will have to meet if he is to buy land in Malawi.

- iv. Allocation by traditional chiefs - some people in Kasungu access land by requesting chiefs to allocate them land and indeed, where the community has some land under his control, the chiefs allocate such land to the landless. It was noted that this practice is slowly dying out because even chiefs do not have enough land and, unlike in the past, land has become a scarce commodity in Kasungu. It is in this regard, that the technocrats asked the government to empower its district land officers to be able to enforce the expiry of land lease by estates as some estate owners in Kasungu have leases that expired a long time ago. They wish government could give district land officers more teeth to be "biting" such cases and also provision of enough resources so that the district land officers could sensitise the communities on the CLA and also carry out regular land supervision. In the next two years, as a way of addressing the challenge of land scarcity, the civil servants called for the implementation of the '*kudzigulira malo*' programme - a programme whereby government buys land from idle estates and redistributes it to landless poor people. They noted that Press Agriculture has idle land in its estates. The civil servants would love to see government buy such land from Press Agriculture and redistribute the land to the landless poor local people of Kasungu.

Moving on to the theme of control over land, according to the civil servants in Kasungu, at household level, men are very powerful and make all decisions with regards to land utilisation in the household. If there are men that consult their women, then these do so as a result of their own goodwill, but culturally the reality is that men have all the control over land at the household level in Kasungu.

At community level, traditional chiefs are very powerful and have over-riding powers over land in the community. A decision made by a chief concerning any piece of land within the boundaries of his jurisdiction takes precedence over decisions made by the actual owners of the land. In fact, chiefs can simply declare that land X or Land Y will be turned into a graveyard or will be used for community development infrastructure. In the face of such a decree, the owners of the land lose their access to the land.

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

The Kasungu civil servants would be happy if the Village Customary Land Committees and the Village Land Tribunals as prescribed by the CLA were constituted and operationalised. These bodies, they say, will free Kasungu from too much control and power over land currently held by the traditional chiefs. Furthermore, the desired future is one in which all land is registered, and tenure security guaranteed.

The civil servants would be happy if, in the next 5 years, District Lands Offices become well-funded and the District Land Officers are given greater jurisdiction and power over land issues at the district level. They argued that currently the District Lands Officers are toothless and powerless as all decisions related to land issued are referred to regional and national lands offices.

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

In the view of the Kasungu government employees, if the CLA is accompanied by clear, simple, and affordable land registration procedures, the poor will no longer be at risk of insecure land tenure. Land grabbing from the poor by chiefs or rich people will cease. Another implication of the current CLA proposals is that the lack of clarity around the role of the District Commissioners in land tribunals will lead to a vacuum in the process of settling land disputes. There is need to clearly state the role of the District Commissioners in administration of land issues at the district level.

5.2 Consultations with police and judiciary officers

5.2.1 Awareness and knowledge about the CLA

The police and judiciary officers reported that they had heard about the CLA but they do not know the full content of the Act. This is despite LandNet Malawi orientating members of Kasungu District Executive Committee (DEC) in the district. It seems that the way the law has been communicated has been more about telling people that government has produced a new law on customary land and that people should start following it, and less about communicating the contents of the law. Therefore, people do not know the implications of the law.

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

Firstly, we discussed access to and ownership of customary land in Kasungu district. The officers indicated that Kasungu has both matrilineal system of inheritance in the southern part of the district and patrilineal systems of inheritance in the northern part. The dominant mode of access and ownership of customary land for the youth, women and the poor is inheritance:

- In the northern part of the district, men inherit the land from their fathers. Women do not inherit but they use the land belonging to their husbands. In cases where a husband has died, the woman stays in the village and uses the land belonging to the husband. Only in situations when a woman wants to remarry is she allowed to leave her husband's village.
- With regards to the youth (male or female), before they get married, they do not own land but use the land with their parents. The males are allocated land when they get married. The females are not allocated land and use the land belonging to their husband after getting married.
- Whatever happens on access and ownership in the northern part of the district happens in the opposite manner in the southern part of the district.
- Other forms of access to land are mostly by those who have the money. These include:
 - i. Access through renting. This is a growing mode of access and it is locally called sub-leasing. However, one does not own the land that has been sub-leased
 - ii. Other people buy the land. This a rare mode of access for fewer people

The second issue discussed with the officers was land tenure security. To begin with, the officers revealed that land tenure insecurity exists in the district. This includes:

- Situations where chiefs grab the land (without the consent of the owners) from their subjects to be used for development projects in their areas.
- Widows in patrilineal areas in the northern part of the district are chased away from the land which they were cultivating, if they decide to remarry.
- There are also cases where brothers grab land from sisters or from fellow brothers.

The current situation is that land is secured in the following ways:

- Physical features such as plant trees and vetiver grass are used to mark boundaries of the fields. This helps to reduce encroachment
- The history of the field is used to ascertain claims by the owners of the field
- The chiefs use the history to protect owners of the land
- The lineage plays a big role in making sure that no one can grab the land from any legitimate owner. This works mostly for women and the poor.

These measures for securing the land have been in use for a long time. However, the officers are concerned that the measures are becoming weak and conflicts related to land grabbing are on the increase.

The third issue was about control over the land. The law enforcers indicated that control over the land is in the hands of the lineage. For example, they emphasised that no one has the right to sell the land as they fear family members. In the past chiefs controlled the land but now they only play a role of settling disputes. In terms of controlling what and how to use the land, the law enforcers indicated that husbands dictate what to grow on the land regardless of the land being owned by a woman in the southern part of the district. But a man cannot sell the land belonging to the woman (wife) in the southern part, while a woman cannot sell the land belonging to the man (husband) in the northern part. It also happens that a man cannot lend out a field that belongs to his wife and a woman cannot lend out the field that belongs to her husband.

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

In terms of the changes they would like to see in these modes of access and ownership in the next five years, the officers indicated that they would like inheritance to continue because it is the only mode of access and ownership which would enable the poor, youth and women to access land. But Kasungu has estates that are idle. In order to improve access to land by the youth, women and the poor, government should consider a localised land resettlement scheme for these categories of people. In next ten years the officers would love to see no changes to inheritance as this is the only reliable way for the majority poor to access and own the land.

In terms of tenure security, looking into the next 5 or 10 years, the officers would like and would love to see traditional measures of securing land (planting trees in boundaries, relying on history and lineage) to continue but they should be reinforced by, for example, registration of the land. They insist that the land should be registered, and land owners should have title deeds. The officers, however expressed concerns on technicalities of land registration as these may work to the disadvantage of the poor. For example, the women and the poor may not be able to afford the fees.

With regards to changes on control over land, the law enforcers would like to see women having more control over the use of the land and the benefits from it.

5.2.4 Implications of proposals in the CLA on access/ownership, tenure security and control by the poor, women and the youth

From the presented findings above, the following are the implications:

- The law enforcers indicated that the proposal for land registration may result in more security over the land but registration alone is not enough unless family members are allowed to continue protecting the land.
- The proposal to establish land tribunals has not been implemented. This situation has created a vacuum, whereby land cases are not being attended to by magistrate courts.
- The law is silent on the role of district councils on land matters. This makes it hard for the council to produce by-laws, which would help chiefs and committees as they handle land matters and issues.

5.3 Consultations with NGOs

5.3.1 Awareness and knowledge about the CLA

When asked who in the room was aware or have ever heard about the recently approved CLA, about 7 out of 19 (32%) of all participants that were present during the introductory session of the meeting expressed that they had that knowledge. However, when the same question was posed to assess how many participants had knowledge of the provisions of the CLA, only 3 out of 19 (15%) of the audience expressed to have such kind of knowledge.

The results above were quite surprising considering that Kasungu is one of the districts where implementation of the CLA is being piloted. Some participants indicated that both chiefs and district stakeholders have not been consulted fully on the CLA, hence the lack of knowledge about the Act. Some participants actually recalled that LandNet made a presentation to DEC in 2018 on the CLA, however they faced some resistance from the chiefs who claimed that they were not consulted during the law formulation process and hence did not agree with the provisions therein.

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

Firstly, we discussed access and ownership to customary land in Kasungu district. Just like the civil servants, the NGOs indicated that Kasungu has both a matrilineal system of inheritance in the southern part of the district and patrilineal systems of inheritance in the northern part. In light of these systems people in Kasungu mostly access land through inheritance. However, there is a change in the inheritance practice where now men inherit the land regardless of the inheritance systems. This is a departure from the times when women inherited the land from their mothers in the south and men inherited the land from their fathers in the north. Now, women mostly use the land belonging to their husbands. In cases where a husband has died, the woman stays in the village and uses the land belonging to the husband. Only in situations when a woman wants to marry again is she allowed to leave her husband's village.

Table 2 below presents a summary of the discussion on current situation and changes the NGOs would like and love to see in 5 to 10 years period.

Table 2 Summary on NGO Group Discussions on land issues now and in the future

Land Issue	Now	Like to see in 5 to 10 years
Access	<p>Access depends on the culture of the area, i.e. Kasungu North is patrilineal, hence the son inherits the land from the father. The south is matrilineal, hence the daughter is supposed to inherit land from the mother. But there are changes now, whereby even in the southern part of Kasungu, sons inherit land from the fathers. Women only have use right to the land for their husbands</p>	<p>Enhance leasing of customary land</p>
	<p>People access land through Village Headperson or through the clan</p>	
	<p>It's difficult for individuals without authority to access land, e.g. youth and women</p>	
Control	<p>Land is under the control of the TA. Of course the clan also controls the rights people have over the land</p>	<p>50/50 distribution of powers between government and traditional leaders with regards to land management</p> <p>But conflicts will escalate with the current proposed land management structures</p>
Tenure Security	<p>People secure the land through leasing of customary land</p>	<p>More people will be registered and people will have more security</p>
	<p>They put boundary markers such as trees or vetiver grass around a piece of land</p>	
	<p>The clan secures the land using cultural history</p>	
	<p>As long as one continuously uses the land there is security</p>	

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

In terms of the changes the NGOs would like to see in these modes of access and ownership in the next five years, they indicated that they would like inheritance to continue because it is the only mode of access and ownership that would enable the poor, youth and women to access land. In addition, since Kasungu has estates that are idle, in order to improve access to land by the youth, women and the poor, government should consider resettling the poor on the idle estate land. In the next ten years the NGOs indicated that they would love to see no changes to inheritance as this is the only reliable way for the majority poor to access and own the land.

Looking into the next five or ten years, participants would like and would love to see traditional measures of securing land to continue but they should be reinforced by, for example, registering the land through the chiefs. The participants, however, also expressed a negative expectation that the CLA will be implemented as it currently is, thus, an anticipation that conflicts will escalate with the current proposed land management structures because in most cases either the structures are not yet there or are being supported locally.

With regards to changes in control, the participants would like to see (within the next 5 to 10 years) 50/50 distribution of power between government and traditional leaders with regards to land management. This would ensure that neither the government nor the local leaders will have sole power to manage issues, and this would act as a control mechanism for either party.

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

From the findings from the consultations with representatives of civil society organisations and non-governmental organisations operating in Kasungu district, the following are the implications:

- The majority of the participants enjoyed the discussions and wished they had done such an exercise before the land law was endorsed

- The fact that no land disputes are being settled at both community and district levels due to lack of institutionalisation of the new Act's structures will result in fierce disputes/riots.
- There is a lot of resistance from the chiefs, mostly due to lack of awareness of the provisions of the Act as well as an anticipated sense of loss of power through the new processes

6. Plenary Discussions

The civil servants, judiciary, police, and the NGOs in Kasungu are in support of the CLA as they see it as a solution to a myriad of challenges surrounding land in the district. Among the challenges are insecure land tenure issues prevalent in Kasungu where foreigners from Burundi and Chiefs are taking land away from vulnerable community members. All three groups support the CLA provision that makes it mandatory for all customary land to be registered- but on three conditions;

- The first condition demanded by all three groups is that the process and procedure of registering land and getting the associated land registration certificates must be made clear, simple, and affordable so that even the poor and other vulnerable citizens of Malawi can afford to safely register their land. The participants explained that the current process of registering land and acquiring title deeds is not only unreasonably complex but also too expensive for ordinary citizens who are less educated and poor.
- The second condition is that the act should acknowledge, recognise and formally incorporate the critical roles of the clan and the traditional chiefs in the administration and handling of land related transactions. This, they argue, will ensure that the commodification of land is controlled, with no one private owner of customary land having absolute right to sell their parcel of land at will. This is important for community building and sustenance because, without such controls by chiefs and clans, villages and clans risk having landless people after all land is sold to outsiders with money. Perhaps this explains why the participants argued that they see land registration as not necessarily a new change, but rather a

process of merely enhancing and strengthening the already existing system of securing and accessing land that is rooted in culture and tradition.

- The third condition for accepting customary land registration is that stakeholders at community level (chiefs and community members) should not only receive adequate civic education on the provisions in the CLA but they must also be heard. These stakeholders have fears based on both facts and misconceptions. These stakeholders have suggestions for strengthening land governance systems and structures. Thus, the district level stakeholders in Kasungu emphasised the need for the government to realise that change is always resisted and that, to mitigate that resistance, government should provide sufficient funds to the District Lands Office to facilitate continuous and intensive sensitisation and civic education of traditional chiefs and community members.

7. Conclusions of Facilitation Team

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

In Kasungu, access, tenure security and control over customary land is embedded in the matrilineal and patrilineal cultures of the Chewa people and the dominant mode of access is inheritance. There is tenure insecurity among the people because chiefs grab the land from their subjects, either to sell to the rich or for government development programmes. Women in the patrilineal groups have tenure insecurity as they are chased away from the land in their husbands' villages when the husbands die.

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

The civil servants, NGOs and law enforcers believe that the CLA is a panacea to the challenges of insecure land tenure in Kasungu because it provides for the land to be registered, and every land owner should have title deeds for their land. The law enforcers also see the CLA bringing more security over the land. But registration alone is not enough unless family members are allowed to continue protecting the land as these members will not allow individuals to sell the land.

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

The civil servants, NGOs and law enforcers would like inheritance practices to continue because it is the only mode of access and ownership which would enable the poor, youth and women to access land. As for the poor who do not have land, the Government should help in getting land from idle estates and give it to the poor, thus a localised land redistribution exercise.

The civil servants, NGOs and the law enforcers are concerned with the powers of the chiefs. They therefore would like to see the Village Customary Land Committees and the Village Land Tribunals as prescribed by the CLA constituted and operationalised. These committees will free Kasungu from too much control and power over land lying in the hands of the traditional chiefs. In order to secure their lands, the civil servants desire to see that all land should be registered.

The civil servants are concerned with tenure insecurity and they would love to see that traditional measures for securing land (planting trees in boundaries, relying on history and lineage) are enhanced and reinforced by land registration. In this case land registration should be seen as value addition to existing traditional measures.

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

Some pathways to resolve land contests and issues have been identified as follows:

- i.** The District Lands Offices should be funded to carry out their duties. Furthermore, the role of the district councils on land matters has to be clear in the CLA so that councils can produce by-laws, which would help chiefs and committees to handle customary land related matters and issues.
- ii.** To protect women and children from land grabbers upon the death of husband, joint land registration should be encouraged by including the name of the wife, and the names of the children on the title
- iii.** The civil servants, judiciary, police, and NGOs in Kasungu are in support of the CLA as they see it as a solution to a myriad of challenges surrounding land in the

district. All the three groups support the provision in the Act that makes it mandatory for all customary land to be registered on three conditions;

- a.** First, the process and procedures for land registration and for getting the associated land registration certificates must be made clear, simple, and affordable so that even the poor and other vulnerable citizens can afford
- b.** Second, the CLA should acknowledge, recognise and formally incorporate the critical roles of the clan, family and traditional chiefs in the administration and handling of land related transactions.
- c.** Third, stakeholders at community levels (chiefs and community members) should not only be adequately civic educated on the provisions in the CLA but they must also be heard.

8. References

1. Chirwa, Ephraim W. 2008. Land Tenure, Farm Investments and Food Production in Malawi. Briefing Paper No. 18, Research Programme Consortium for Improving Institutions for Pro-Poor Growth (IPPG), Manchester
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3. Government of Malawi, 2008. Ministry of Finance. 'Malawi Social Action Fund: Resettlement Policy Framework. RP 670.' Lilongwe: Ministry of Finance
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5. T.S. Jayne., Jordan Chamberlin., Lulama Traub., Nicholas Sitko., Milu Muyanga., Felix K. Yeboah., Ward Anseeuw., Antony Chapoto., Ayala Wineman., Chewe Nkonde., Richard Kachule., 2016. Africa's changing farm size distribution patterns: the rise of medium-scale farms. *Agricultural Economics* 47 (2016) supplement 197–214

9. 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				