



*Knowledge Innovation and Excellence*

# Community Level Land Dialogue Report

## Community Stakeholders' Understanding of the Current Land Context, the Customary Land Act (2016) and their Desired Future in Area of Traditional Authority Khombedza Area, Salima District

By

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**About SAIRLA - [www.sairla-africa.org](http://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 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

According to the Salima Social Economic Profile (SEP) 2017-2022 final draft, the district is located in the Central Region of Malawi, 103 kilometers east of Lilongwe, the country's capital city. It has a total land area of 2,196 square kilometers, which represents 2.3% of Malawi's total land area. It shares boundaries with Nkhota-kota to the north, Dowa and

Ntchisi to the north-west, Lilongwe to the west, and Dedza and Mangochi to the south. The entire eastern part of the district borders Lake Malawi.

The District has a projected population of 478,346 people according to the 2018 National Population Census (NSO, 2019). Chewa and Yao are the major tribes in the district, with Tonga, Tumbuka, Nyanja, and Ngoni the four minor tribes. The main languages spoken are *Chichewa* and *Chiyao*. Christianity forms the substantive religion practiced representing 66% of the total population, while Muslims represent 29% of the population. 4% have no specific religion and 2% practice religions other than Christianity and Islam. Salima district is predominantly characterised by matrilineal system of marriage and inheritance where men usually preside at their wives' villages and mostly cultivate land belonging to the wife's family. In this case, children usually belong to the maternal side.

The main source of livelihood is subsistence agriculture practiced on about 107,400 hectares of customary farm land. Maize is the major food crop grown in the district followed by rice, sweet potatoes, and cassava (Salima SEP, 2017).

#### **4.2 Major agricultural activities/projects in the area**

The district experiences general warm tropical climate with mean annual temperatures of 22<sup>o</sup> Celsius. Temperatures are highest between October and November and lowest around June and July. The district has vast potential for economic growth and expansion through agriculture and tourism (Salima SEP, 2017).

There are major agricultural projects taking place in the district. These include the Green Belt project, the Malawi Mangoes Project, and the Mtalimanja Sugar Project. There are also some estates. The main crops for smallholder farmers remain tobacco, maize, and legume crops such as soybeans, common beans, and groundnuts. The irrigation potential has not been fully utilised with only 1400 hectares (2%) of arable land is being used for commercial agricultural purposes out of over 56,100 hectares available under this category. The district also has vast unutilised land and good climate and vegetation suitable for large-scale livestock rearing and allied industrial processing projects (Salima SEP, 2017).

Salima also boasts of being one of Malawi's tourist havens. Its entire eastern boundary is made up of Lake Malawi providing almost 100 kilometres of fresh water with numerous

exquisite beaches and colourful sand. There are 24 hotels and lodges, 32 rest houses, 5 public cottages, 3 camping sites and 4 guesthouses, providing tourist services to an increasingly growing number of foreign and domestic visitors with capacity to accommodate more. The increase of support service initiatives, such as improved road networks, has boosted the Tourism Sector during the past 5 years (Salima SEP, 2017).

According to the Salima SEP 2017-2022 final draft, the key development issues that have been identified in the district are; low food productivity, low household income levels, high prevalence of HIV/AIDS, high maternal and infant mortality rates, low access to safe water, high primary school drop-out rate, environmental degradation, poor accessibility due to under developed transport infrastructure, underdeveloped tourism industry, and high adult and youth unemployment.

#### **4.3 Activities related to implementation of customary land law in the area**

Salima is not one of the pilot districts for the implementation of the CLA. However, the NLA chose the district for consultations because of the presence of the large agricultural projects and the tourism industry, both of which might have impact on the dynamics in relation to customary land.

#### **4.4 Description of the stakeholders consulted**

The meeting in TA Khombedza took place on September 21st, 2018. It was attended by ten chiefs, four women representatives, representatives of the youth and members of the Area Development Committee as shown in Table 1 below. During the meeting the discussions centred around the following areas:

- Awareness about the new Customary Land Act, 2016
- The current situation in the district with regards to access/ownership, tenure security and control
- The aspiration/changes they would like to see in the next five years and they would love to see in the next 10 years to come

**Table 1 Stakeholders consulted**

Stakeholder group	Detail	Male	Female
<b>Area Development Committee</b>	NGO, government staff, private sector, chiefs	4	1
<b>Chiefs</b>	Group Village Headmen	6	4
<b>Women Empowerment Group</b>	Women from the area	0	4
<b>Youth</b>		3	4

#### **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 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 5 to 10 years. Finally, the groups were 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 was 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 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 Women

#### 5.1.1 Awareness and knowledge about the CLA

Although not aware of the provisions of the CLA, the women in Khombeza in Salima pointed out that they have heard about the new land law which has been enacted recently and are happy with the law because, through land registration and formation of village land committees, women land rights and tenure will be secured.

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

The women in the area of TA Khombedza indicated that the main ways through which people access land in the area are as follows:

- i. Inheriting from parents – The main way of accessing land in this Area is through inheriting land from parents. Children, upon reaching an age where they can get married or can be independent, are shared land by their parents.
- ii. Renting – some people access land via renting every growing season. Most people that were displaced by the large irrigation project in Khombeza, the Greenbelt initiative, are renting land in the area because the compensation they were given was only just enough to buy land on which to construct a house. They were largely not able to buy land for farming. This has resulted in prices of land rentals going up.
- iii. Buying – as discussed above, the Greenbelt initiative caused displacement of local people who received compensation for the land they gave up. Such people access land by buying new land from people in the area away from the Greenbelt land. This has seen land been commodified in the area.
- iv. Requesting land from traditional chiefs – this practice was common in the past but has now almost stopped because available land has become scarce. Chiefs used to share land to mostly new immigrants into their area.

On the theme of security of tenure, women in T/A Khombeza in Salima say their land tenure is secure until their ancestors die. Security of tenure comes from elders in the clan

and from local chiefs. The chiefs, clan elders and the rest of the community members now who owns which land based on their daily interactions and historical memory.

With regards to control over land, women in Traditional Authority Khombeza in Salima said that mostly men make all the decisions over land. Women are rarely consulted on household decision making on land issues. Even for households that are under a matrilineal system of marriage (*chikamwin*), men still control the land. According to the women, what the men under matrilineal marriage system in Salima's Khombeza area do not have are powers to sell or rent out land. However, power on what to grow and how to grow it and how to utilise produce from the land remains the exclusive domain of men.

### 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

At community level, chiefs are the custodians of all land within their territorial boundaries and have overriding control over all manner and size of land endowed in their community. Sadly, according to the women, chiefs have become very corrupt and are abusing their power by grabbing land from their defenceless vulnerable subjects like widows, the poor, and orphans. In this regard, the women are praying for the government to register all land and give land titles to rightful owners of land in the area. This, the women say, will protect vulnerable community members from the land predating behaviour of their chiefs and their rich accomplices.

Therefore, in the next 5 to 10 years, the women in TA Khombedza would like and love to see that all their land registered but free of charge. This will prevent corrupt chiefs from grabbing land from the poor people to sell to people with money. The women lamented that *"it is important that Government and NGOs should protect our land otherwise as women we will not be able to access land soon"*. In their analysis, the women said that chiefs are against the CLA because they are protecting themselves from losing their power over the land. Land is bread and butter for the chiefs and they are protecting it.

The women emphasised that, presently, it is common to see some chiefs snatch away land from defenceless poor women after the death of their parents. One woman in the FGD cited herself as an example as she has recently lost one of her pieces of land to a neighbour who was favoured by the local chief. To quote:

*“I am very poor. I cannot bribe the chief to be on my side and defend my land tenure. The other person has money and I know he bribed the chiefs. Nowadays if one has no money, one cannot win any case. I lost my land and I have just given up”.* (Khombedza Women FGD, 21/09/18)

It is because of this new phenomenon of chiefs snatching away land from defenceless women that the women are proposing that women should form land groups and committees so that they can protect their land. In addition, Khombeza women also propose that everyone should register their land to the government and get title deeds, saying that, through this way, their land will be secured. One woman said *“When I register my land, I will have all the papers. No-one will push me around because I will have documents as evidence that I own the land”* (Khombedza Women FGD, 21/09/18).

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

The women in TA Khombedza foresee that land will become too expensive and thus a preserve only for the rich. The price of land has sky-rocketed and they don't know how the children of the poor people will get land in the coming 5 to 10 years. To this end they propose that there should be modalities to stop people from selling customary land.

## 5.2 Consultations with Chiefs in the area of TA Khombedza

### 5.2.1 Awareness and knowledge about the CLA

In TA Khombedza, the chiefs claimed that they do not know much about the CLA because NGOs only invite Development Committee (ADC) members to meetings. They have only heard about the law through the radio.

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

In the area of TA Khombedza the dominant mode of access currently is inheritance. In places where *chitengwa* is practiced, men access and own the land they inherit from their parents, while where *chikamwini* is practiced, men use the land belonging to their wives. The same also happens with women, whereby they inherit the land from their parents in places where *chikamwini* is practiced and they use land belonging to their husbands

where *chitengwa* is practiced. Other modes of access to land are mostly by those who have the money. These include:

- 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
- Other people buy the land. This a rare mode of access for fewer people.

In terms of tenure security, the chiefs indicated that currently people secure their land as follows:

- They plant trees around the fields or vetiver grass to mark boundaries to reduce encroachment
- The chiefs and family members are witnesses and they use their knowledge of the history of the land to protect owners of the land so no one can grab the land from any legitimate member of the family

However, there are situations when security over the land is put to test. These include:

- Situations where the head of the family takes away land from family members.
- Where women are chased away from the land they were cultivating when the husband dies, if they decide to re-marry.
- Some chiefs are grabbing land from their subjects
- Brothers grab the land from sisters or from fellow brothers.

In terms of control over the land. The chiefs indicated that control over the land is in the hands of the family members, chiefs and parents and the children. These units play a big role such that no one can sell the land for fear of family members, the chief and children.

### 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 TA Khombedza, in the next 5 to 10 years, the chiefs would like and love to see the practice where people inherit the land continue because it is the only mode of access and ownership which enables the poor, youth and women to access land since most people cannot afford to buy the land as proposed in the CLA.

In terms of tenure security, the chiefs were concerned that conflicts related to land are on the increase. This shows that the measures for ensuring security are becoming weak.

They therefore would like and love to see people register their parcels of land in the coming five and ten years as quickly as possible. However, title deeds should not be used as the only land tenure security measure, but as a supplement to the existing measure such as those that the chief and family members are currently employing. To quote:

*“there is nothing wrong with the family and chiefs protecting the land but we also know that some chiefs are corrupt. To enhance security, it is good that land should be titled so that chiefs do not have 100% powers over the land. But our fear is that titles may give absolute ownership to individuals thereby giving people a license to sell land. If this happens, then the poor will lose land”* (Khombedza Chiefs FGD, 21/09/18).

In terms of control over customary land, the chiefs would like and would love to see no changes to these control mechanisms. Chiefs, families and parents should continue to control the land because land belongs to the clan (*malo ndi aku mtundu*).

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

The chiefs expressed the view that any changes to modes of access and ownership, mechanisms for tenure security measures and control would have the following effects;

- There will be more confusion in customary land as people will become more individualistic. They will do anything with the land, for example selling, without consulting and respecting the rights of other members of the family.
- The proposal to establish committees will reduce the power of chiefs over the land.

### 5.3 Consultations with ADC members in the area of TA Khombedza

#### 5.3.1 Awareness and knowledge of the CLA

Unlike the chiefs, the ADC members were all aware of the Customary Land Act (2016). They pointed out that the new law empowers women and children to own the land. They added that the law allows everyone to register the land to secure their land. More importantly there will now be committees to manage customary land instead of chiefs. The members indicated that they know most of these things because they have attended meetings organised by NGOs such as LandNet.

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

The ADC members' description of the current situation in relation to access to land did not differ from that of the women. They indicated that the main ways through which people access land in the area of Senior Chief Khombeza are inheriting from parents, renting, buying and borrowing. But the most dominant mode of access for the youth (male and female) is inheritance.

In terms of security of tenure over the land, ADC members indicated that they plant trees around their fields to mark boundaries so that no one should encroach. But in most cases parents and chiefs are the ones who ensure that the owner of the land feels that his tenure is secured because these people know who owns the land. No one can take away the land because chiefs and parents are there to protect owners' rights. Chiefs and parents also make it impossible for the one using the land to sell the land.

With regards to control over land, ADC members revealed that men (husbands or *akamwini*) and maternal uncles are the ones who control the land. This is despite the area being matrilineal. Women, although the owners of the land, are rarely consulted by their husbands on what crops to grow. The women also do not have the powers to sell the land because they fear the maternal uncles.

### 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

The ADC members would like to see inheritance continue in the next 5 to 10 years because this is the only way most people can access land. However, as the population increases, the modes of access such as inheritance and borrowing might reduce and many people will start relying on renting and buying land.

In terms of tenure security, in the coming 5 to 10 years, the ADC member would like to see title deeds in use to protect the land they own. The members have learnt from meeting with LandNet that people will register their land to ensure security. This news is welcomed as it will ensure total ownership and security of land.

In terms of control, men, women, boys and girls have control over the land. Men and women control the inherited land while boys and girls control the land they buy. The

members expect to see equal control over the land by men and women because of the 50:50 campaign.

#### 5.3.4 Implications of proposals in customary law on access/ownership, tenure security and control by the poor, women and the youth

The dominant mode of access is inheritance. This mode of access is suitable for those who cannot afford to buy or rent the land. Any changes to this mode of access will make majority of the people landless. It is therefore important that the practice should remain.

The proposal to register the land is good as it will reduce the powers of the chiefs over land. The chiefs are corrupt and ways to reduce their powers are a welcome development.

## 6. Plenary Discussion

The members of the ADC agreed with the women that women, orphans and the poor do not enjoy secure land tenure. Chiefs who are hungry to get money are grabbing land from the people who were displaced by the Greenbelt irrigation project. The displaced people received some compensation but chiefs are grabbing land from them because they are defenceless and vulnerable. Chiefs, on the other hand, defended themselves and rejected the assertions that they corruptly sell vulnerable people's land.

There is clearly a polarisation between chiefs on the one hand and their subjects on the other, with each one of them protecting their interests. The Chiefs from Khombedza area rejected the suggestion that they are abusing their powers over land. They argued that there are no challenges and issues concerning land governance in their respective areas. The chiefs' view is said the CLA is not necessary and should not be introduced in their area, with the exception of registration of land parcels. The women and the members of the ADC on the contrary said that they were not surprised that the chiefs are rejecting the CLA, since they benefit from the current weak law which gives them too much power - the power they are abusing by corruptly getting money and other benefits from their subjects' land. The members of the ADC also blamed the chiefs' resistance towards the CLA as resulting from fears that it will take away the chiefs' powers over land - a sign of the chiefs' lack of understanding of the CLA. The ADC members argued that, the CLA retains respect for the role of chiefs in land administration.

From the plenary discussion, it was evident that there is need for more open and honest engagement between the chiefs, members of the ADC, LandNet, and Ministry of Lands so that these stakeholders can reach a common understanding of the CLA and solutions based on win-win arrangement can be salvaged. As it is, in T/A Khombedza area the CLA is likely to face strong resistance from traditional leaders from the area.

## **7. Conclusions of Facilitation Team**

With regards to access and control over land, women and men in T.A Khombedza area were generally observed as accessing land mainly from inheritance from their maternal relations/parents. Land prices are rising but a small portion of men and women might also access land by means of buying or renting. Men and other people who might not have access to land through maternal inheritance or purchasing power may also access land from the chiefs, although this is becoming less common.

With regards to control over land, even though land ownership is largely vested in women, men, especially husbands, have significant control over land when it comes to decisions over crops to be grown and benefit sharing on such pieces of land. However, because of the matrilineal system whereby men live at their wives' village and cultivate the land that belongs to their wives, women tend to have more control than their husbands when it comes to selling or renting out their pieces of land. Selling land is not a straight-forward issue, however, because women have to get approval from the chiefs and other male elders from their clan to do so. These findings are similar to those noted in recent literature on land and the matrilineal inheritance system (Berg & Kambewa, *at al.*, 2014; Chitsike, et. al., 2017; Chitonge & Bwalya Umar, 2018).

With regards to security of tenure over land in Salima, T.A Khombedza area, it was evident that the local chiefs are happy with the status quo because according to them, tenure security provided by the traditional system is working efficiently. The understanding of the local chiefs is that the CLA is aimed at usurping their powers, making them less relevant to their subjects. Therefore, according to the chiefs, if the CLA is operationalised, they foresee a situation where their subjects will be freely selling the land to outsiders which eventually may result in many landless villagers. The chiefs argue that

currently there are traditional mechanisms in place that provide checks and balances and ensure that land is not recklessly sold to outsiders by individuals.

On the other hand, ADC members, youth and women representatives were of the view that before their chiefs became corrupted with greed on money, people were satisfied with the tradition-based customary system of ensuring land tenure security. They said that chiefs, village elders and local people with deep historical knowledge of land ownership in the area, were working hand in hand to provide credible land tenure security to all. However, with the intensive investment brought by the Greenbelt Authority in the area, land has become a commodity and chief have become easily corrupted, grabbing land from the women and the youth when their parents die.

In T.A Khombedza therefore, women, the youth and ADC members seem to have a positive outlook towards the CLA and will welcome it with much excitement since they regard it as a panacea to the emerging problem of mistrust that has emerged between the chiefs and their subjects due to the problem of land grabbing by the local chiefs.

Based on the consultations with different community stakeholders in Salima, aspirations of men and women, youth and community leaders of T.A Khombedza, Salima are quite polarised. While most people in T.A Khombedza agree on the concern that in the future they may have no land from which to earn their livelihood, women in particular were specific in foreseeing that there will be a big land crisis and worsening levels of poverty in the next ten years due to overpopulation and acute shortage of land. In finding solutions to this doomed future, men, women, youth and ADC members in this area would love and like to see that within the next 5 to 10 years equitable access to land for men, women, youth and the poor through the implementation of the CLA. Chiefs, on the other hand, foresee that the CLA would perpetuate loss of clan land through legitimising individual selling which might lack the checks and balances of the current traditional system. Instead, they aspire towards the maintenance of the status quo, with a few adjustments on reinforcing land registration. As it is, in T/A Khombedza area the CLA is likely to face strong resistance from traditional leaders in the area.

Generally, as the observations above suggest, the chiefs, women and ADC members see the CLA differently. The only way forward to reaching mutually acceptable land legislation

and governance is to have a law that respectfully tries to strike a balance between the concerns raised by all the community stakeholders hereby consulted which have varying degrees of merit to some extent in their own right.

It was evident that there is need for more open and honest engagement between the chiefs, members of the ADC, LandNet, Ministry of Lands and others so that these stakeholders can reach a common understanding of the CLA and solutions based on win-win arrangements can be reached.

## 8. References

1. C. Chitsike, J. Kampanje-Phiri and N. Sangole. 2017. Aqualitative Evaluation of gender aspects of Agricultural Intensification practices in central Malawi. International Institute of Tropical Agriculture (IITA): [www.africa-rising.net](http://www.africa-rising.net)
2. E.W. Chirwa. 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
3. H. Chitonge and B. Bwalya Umar (Eds). 2018. Contemporary Customary Land Issues in Africa. Newcastle: Cambridge Scholars Publishing.
4. Government of Malawi, 2002. Malawi National Land Policy
5. Government of Malawi, 2008. Ministry of Finance. 'Malawi Social Action Fund: Resettlement Policy Framework. RP 670.' Lilongwe: Ministry of Finance
6. Government of Malawi, 2019. Salima District Social Economic Profile (SEP) 2017-2022. Salima: Republic of Malawi.
7. National Statistical Office (NSO). 2008. Population Projections. Zomba, Malawi.
8. National Statistical Office (NSO). 2017. Integrated Household Survey 2016-17. Zomba, Malawi
9. National Statistical Office. 2019. Malawi Population and Housing Census report – 2018. Zomba, Malawi.  
[http://www.nsomalawi.mw/images/stories/data\\_on\\_line/demography/census\\_2018/2018%20Malawi%20Population%20and%20Housing%20Census%20Main%20Report.pdf](http://www.nsomalawi.mw/images/stories/data_on_line/demography/census_2018/2018%20Malawi%20Population%20and%20Housing%20Census%20Main%20Report.pdf)
10. T.S. Jayne., J. Chamberlin., L. Traub., N. Sitko., M. Muyanga., F. K. Yeboah., W. Anseeuw., A. Chapoto., A. Wineman., C. Nkonde., R. 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				