



Knowledge Innovation and Excellence

Community Level Land Dialogue Report

Community Level Stakeholders' Understanding of the Current Land Context, the Customary Land Act (2016) and their Desired Future in the Area of Senior Chief Lukwa 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 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

The area of Senior Chief Lukwa is largely under a matrilineal system characterised by women living in their natal homes and mostly cultivating land belonging to their maternal mothers. Lukwa area, just like the entire Kasungu District, has a significant number of tobacco estates. Attracted by its fertile soils, middle-class working people from the nearby capital city Lilongwe are increasingly trekking to Kasungu in their large numbers, either renting or buying land for cultivation of tobacco or engaging in seed multiplication of maize, beans, or soybeans.

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 rich people 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

Lukwa area in Kasungu district is one of the areas where the CLA is being piloted. As part of piloting activities, Kasungu District Lands office (in conjunction with LandNet) has sensitised chiefs, local development committees, and the youth in the area about the new Act. In addition, the Village Customary Land Committees have been formed. However, the Village Land Tribunals are yet to be constituted. In addition, the process of identifying boundary demarcations for traditional authorities in Kasungu is underway, but some chiefs are refusing to sign for the new boundaries.

4.4 Description of the stakeholders consulted

The consultations took place on 7th September 2018 at the Headquarters of Senior Chief Lukwa. Table 1 provides details of the stakeholders consulted and included:

- Chiefs under Senior Chief Lukwa
- Women belonging to the Women Empowerment Group. The women's group is an advocacy movement organisation on land rights. It was formed with the facilitation of LandNet.

- The Area Development Committee. A local government multi-stakeholder committee on rural development. Members are responsible for planning and implementing development projects. They are influential in local decisions on rural development.
- Representatives of young people from within the area of Senior Chief Lukwa

Table 1 Stakeholders consulted

Stakeholder group	Detail	Male	Female
Area Development Committee	Community members	4	3
Chiefs	1 Senior Chief, 2 Group Village Headmen, 3 Village Headmen, 1 Messenger for the Senior Chief	5	2
Women Empowerment Group	Women from the area of Senior Chief Lukwa, who have been trained in land rights and advocacy by LandNet	0	5
The Youth	Young people from the area of Senior Chief Lukwa	4	3

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, youth 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 focus group discussions 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, the ADC, youth and the chiefs

5. Results of Focus Group Discussions

5.1 Consultations with Women

5.1.1 Awareness and knowledge about the CLA

Women of Lukwa were trained by LandNet (an advocacy NGO on land issues) on the CLA. Of the five women who took part in the discussions, four women (representing 80%) said that they are aware of the CLA and have knowledge of the substantive contents of the Act. However, because these women were all members of the women empowerment group that have been sensitised on the Act by LandNet, their levels of awareness and knowledge of the law may be due to their membership of the group and may therefore may not be representative of the average woman in the area.

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

Women who participated in the focus group discussions acknowledged that traditional land administration and land dispute settlement systems by clan leaders and traditional chiefs were effective in ensuring secure land tenure for both women and men. Land tenure security was derived from the village institutional memory held by village members. Village members know the respective owners of every piece of land in the village and this provides security of tenure because no one can just wake up and claim land that is not theirs. Even when selling land, the selling process was done in such a way that the chiefs, clan members, and members of the village knew and socially approved the transaction.

However, the women said that the increased intensity of commodification of land as a tradable commodity on the market, has brought in land tenure security threats. Unlike in the past, some chiefs and some clan leaders have started grabbing land belonging to women and even some men, and selling it to rich men to open up big farming estates. It is on this basis that the women in Senior Chief Lukwa's area are seeing the CLA as a panacea to these emerging land tenure security threats. The women feel that land valuation and land registration processes to get land registration certificates will go a long way towards securing the land tenure system in the area.

As far as access to land is concerned, women cultivate land belonging to their husbands because in most marriages in Kasungu's Lukwa area now a woman lives with her husband, as it is in the patrilineal system. This is a change from the usual practice where women used to live in their natal village with their husbands. When divorce happens, and the women are forced to go back to their parents, these divorced women are shared land by their parents or their brothers until they remarry. The women are, however, sad that after the death of their husbands, they are forced to go back to their paternal home by the relatives of their late husbands (forced *chisudzulo*). Increasingly, widows are not being allowed to use the land left behind by their late husbands. In not so common cases, some women who marry men from outside Kasungu are shared land by their paternal parents.

According to members of the Women Empowerment group, for men it is all rosy when it comes to them accessing land. Men inherit land from their parents. They are also shared land by their paternal parents when they marry. Other men also lease/rent and/or buy land from those that have more land in the area. The renting or buying of land is common amongst men from outside the district who come from Lilongwe city to do commercial farming, more commonly to do seed multiplication. These seed multipliers have pushed up prices of land for renting or buying, a commodification process that has resulted in some parents preferring to sell or rent out their land instead of sharing it with their children. Young people in senior chief Lukwa's area are sad about this emerging trend.

According to the women, girls in Senior Chief Lukwa's area do not own any land, rather they just assist their parents by providing labour. When such girls get married, they start cultivating land belonging to their husbands. Boys inherit land from their parents when they become adults and are about to get married. In addition, some young people, frustrated by their stingy parents, access land by renting land every growing season. As noted earlier, the sad thing is that with the influx of middle-class farmers from Lilongwe renting land in the area for seed multiplication ventures, prices for renting land have become too exorbitant for the jobless young people in the area to afford.

Chiefs access land by inheriting land from their parents just like all other men do in the area. Recently, according to the women FGD participants, chiefs in the past 5 years have been grabbing land from vulnerable and defenceless community members like orphans, widows, and other poor people. The women said they would love chiefs to stop being

corrupt when handling land issues. The women said that chiefs, because of love of money from rich community members or from people with money from Lilongwe, are corruptly facilitating dubious land sales and rentals in the area.

Turning to the issue of control over land, women in Kasungu's Senior Chief Lukwa's area, made it categorically clear that men have all the powers of controlling land in the household. In line with the patrilineal system of marriage (*chitengwa*), men enjoy exclusive control rights of land over their wives in Senior Chief Lukwa's area. The women are not consulted by their husbands when making decisions over land. According to the women, men look at women as weak and poor decision makers who should not be listened to.

When it comes to the sons and daughters in the households, the women said that these are 'properties' of the households who are just being taken care of by their parents and as such do not deserve to have any say or control over land in the households. The women all agreed that they are happy with the status quo that gives no control or power over land to the youth. The male youths only get control over land when they get married and are allocated their own land. For the daughters, they start having a say when they are married and are living at their husband's home.

In Senior Chief Lukwa's area, Chiefs are all-powerful figures over land, with unlimited control over land available in their area of jurisdiction regardless of who owns it. According to members of the women's empowerment group, chiefs have powers to grab/sell or give any portion of land to anyone they want without, even without the consent of the actual owners of the land. The women said such powers need to be curtailed and reduced. The women see the coming compulsory customary land registration by government as prescribed in the CLA as a solution to chiefs' abuse of power in the area of Senior Chief Lukwa. The women therefore welcome the operationalisation of the new customary land act in their area with gratitude.

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

Women would like to stop the practice whereby women lose access to their husband's land after his death. They would love to see widowed women allowed to continue using their late husband's land. Actually, the women would love to have equal rights with men

when it comes to access to land from parents. The husband should be encouraged to write a will so that in case of death, grabbing of property and land could be minimised. Even women or daughters should also inherit land from their parents. In addition, the women would love if it was made a requirement that men should only be able to sell land after consulting and getting agreement from their wives and/ or sisters. According to the women, they would be happy if men were allowed to also start inheriting land from their maternal homes.

Coming from a background where people have lost land to chiefs or other clan members through land grabbing, the women said they would be happy if all parents registered their land and got land ownership certificates. The land certificates, according to the members of the Women Empowerment group would secure children's access to the land even after the death of their parents. In this regard, the women said they are looking forward with excitement to the government starting to register all customary land as prescribed by the CLA.

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

In the views of the women, the CLA empowers and protects women, the youth, and the poor from land grabbing by powerful members of their society including chiefs, men, and the rich. The women see the proposals in the new customary land act as a panacea to their long-standing vulnerability in so far as land tenure security is concerned.

5.2 Consultations with the Youth

5.2.1 Awareness and knowledge about the CLA

Members displayed a basic awareness of the CLA with payment for registration and securing of land registration certificates as the most common issue mentioned.

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

Access to land: Land inheritance is the common mode of access to land whereby grown up children are shared a parcel of land, especially upon marriage. We noted that land rentals (costing about MK15,000/year /acre for one agricultural season) and land outright purchases are also common for those who can afford it (on average an acre costs

MK700,000 to buy). More authority over the land rests with the sons who also have some custodial control over land reserved for their sisters.

Land tenure security is mostly gained through the family especially parents if they are still alive. It was noted that parents can reclaim the land they previously allocated to their children if they deem it fit to take it back especially in cases where the child no longer uses the land.

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

Due to their prior exposure to the CLA, the respondents indicated issuance of land certificates as the ideal situation they would love to see. However, corruption by traditional leaders is seen as a challenge to the process of validating who owns which piece of land before land certificates are issued. However, they still see village heads as being very instrumental in the process of land management due to their knowledge of the history of land allocation in the area.

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

The youth in Senior Chief Lukwa's area view CLA as youth-friendly as it will empower the youth to enjoy security of tenure over the land given to them by their parents. The youth will be registering land allocated to them by their parents, effectively barring their parents from reclaiming the land from them. Parents, due to their interests in renting or selling the land, are grabbing land from the youth.

5.3 Consultations with Traditional Chiefs

5.3.1 Awareness and knowledge about the CLA

The chiefs indicated that they were aware of the CLA because they have been working with LandNet. When asked if they knew about the proposals in the Act they mostly indicated that land has to be registered, there will be committees responsible for allocating the land and there will be committees to settle disputes.

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

First, we discussed access and ownership to customary land in Senior Chief Lukwa's area. The chiefs started by saying that people in this area are Chewas. Unlike in other Chewa places, marriage systems are such that, after getting married, a woman lives in her husband's natal village. Access to and ownership of the land is such that a man inherits the land from their parents. Women use the land belonging to their husbands. In some cases, the chief allocates land to the man if he needs more. The youth use the land belonging to their parents.

In terms of the changes the chiefs would like and love to see in five and ten years the chiefs indicated that they do not want the situation to change. Any change to this situation means bringing to the end the Chewa culture (*Uchewa watha*).

The second issue discussed with the chiefs was land tenure security. The chiefs indicated that security over the land, whereby no one can take away the land, is achieved through the following:

- They make physical features such as planting trees and vetiver grass to mark boundaries of the fields. This helps to reduce encroachment
- The chiefs use the history of land ownership 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.

These measures for securing land have been in use for a long time. They do not want any changes to these measures. "*Tidazipeza, tidzazisiya, zidzapitilirabe*" (*we found these measure for securing the land, we will live them, and they will continue forever*).

The third issue was about control over the land. The chiefs reported that parents, the family and chiefs are the ones in control over the land. No one can do anything with the land he/she uses without the knowledge of these three units. The chiefs do not want to see any changes to the measures of control. *Tidazipeza, tidzazisiya, zidzapitilirabe* (*we found these measure for controlling the land, we will live them, and they will continue forever*).

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 chiefs would like and love to see in five and ten years, the chiefs indicated that they do not want the situation to change. Any change to this situation means bringing to the end the Chewa culture (*Uchewa watha*).

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

The chiefs do not want to see any changes to the way the land is accessed, owned, secured and controlled. They fear that any change might result in the following:

- Any change will erase the Chewa culture
- Any change will bring more conflicts among the people
- Land registration will make the land more of a personal property. This will bring too much freedom to the people as they will not fear any of the family member since the land is an individual property
- Any changes will reduce the power of chief, lineage, family and parents over land
- If the land is to be registered, chiefs, family members and parents should still have the power to control what the individual does with the land

5.4 Consultations with Local Development Committee

Seven people attended the meeting. In attendance was the chairperson of the Area Development Committee (ADC). Of the attendants, four were men and three were women. Of the four men who participated in the meeting, two reported that Lukwa was their paternal home and that they have inherited land from their fathers whilst the other two considered Lukwa as their maternal home and have access to land from their mothers' side. Two of the women who attended the meeting, described Lukwa as their mothers' home and hence were able to access land from their mothers. Only one woman had relocated to Lukwa as/into her marital home. This information was revealed by participants when they were asked to introduce themselves by way of stating their names; whether they considered Lukwa as their paternal or maternal home and; how the land was accessed.

5.4.1 Awareness and knowledge about the customary land law

Whilst responding to the question of whether they knew about the CLA, the ADC members expressed “yes” vehemently. A follow up on what they know to be key provisions in the law revealed that:

- Members stated that the law will allow them to register land that they inherited from their parents, “akuti lamuloli lidzatithandiza kulembetsa malo monga tichitira ndi ma estate” (they say the law will help us to register our land just as we do with estates).
- The new law will allow us to register at the district council as opposed to sending the documents to Lilongwe for processing of the deeds of estates.
- The law will place land officers in the villages who will assist in the land registration process thereby cutting on costs for surveying our fields.

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

For the majority of the people in Senior Chief Lukwa’s area, land is accessed through inheritance from parents, leasing in, marriage, renting in, purchasing and goodwill apportioning of land by the chiefs. *“Our parents ensured our access to farm land when we came of age, we have extended this gesture to our children”*

When participants were asked how the sex of children affected who can have access to the land through inheritance, it was interesting to hear the women say that both men and women have chances to access land. The men also chipped in to say that *“we practice both chikamwini and chitengwa but we have allowed our sons to access land from their fathers as well as mothers’ homes.”*

Farmland is also accessed through leasing in land on estates. Cash crops like tobacco and seed are usually produced on leased land. Companies and large-scale farmers whose estates are not fully functional are the ones leasing out land in the area.

The group also reported that land is accessed through renting in land. The renting in of land was found to be quite common among small scale farmers and people who are not from the area. In response to being asked who rents in land they responded *“We have seen traders, civil servants and people working for various organisations work on rented*

land'. The participants reported that most often landowners end up selling land to the people who rent in.

Permanent acquisition of land by buying was also reported as a means of accessing land. When quizzed as to when such kind of practices began to happen, the participants hinted that it dates back to the late 1980's, as they recalled that most estates are as old as the 1980's and have exchanged hands from one owner to another. They reported that purchasing and selling of land is now on the rise due to population growth.

Some people also access land by making a request to chiefs. Chiefs may allocate land to people who are desperately in need of land such as divorcees and widows (who may have been subjected to land grabs). However, this is not very common.

Control over land is usually in the hands of adults (husband and wife) in a household. They decide on what crops to grow and also which land to rent out.

Tenure security is achieved through the following means:

- Title deeds
- Lease forms
- Vetiver grass for boundary markers
- Clan history

5.4.3 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 participants vouched that the prevailing mode of accessing land as earlier reported should be sustained. This is the only way the poor can have land in the area.

On control over land, the group thought that both women and men should still have control. In families that have a husband and wife, the control should be through joint decision making. The expressed feelings were that, in the present situation, men and women enjoy joint control in practice except in rare cases such as decisions relating to land allocation for cash crops.

Tenure of security for the land was discussed with reflections for the future. The participants noted that securing land by means of boundary markers will no longer be possible. The group felt that the titling and registration of land would be more important

to secure land. But it is important that traditional boundary marking should still play a relevant role together with clan history and chiefs. When asked which system they would like to keep for tenure of security, they opted for a mixed system (which they called a hybrid system) that uses clan history, chiefs and land titles. The discussion further reflected on the need to ensure that women - particularly the widows, divorcees (in cases of *Chitengwa*) and orphans - should be considered to have their land, which they owned as a family, secured.

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

The ADC members made observations that any changes to the prevailing modes of access (status quo) in the future will result in only the rich having land to pass on to their children and that the most likely modes for people to access land would be through renting in, buying in land and leasing. Further to this they hinted that women's access to land would be more secured given the support that there are getting from NGOs. They speculated that whether the potential wife has land or not will soon become a factor that men take into account when making marriage decisions.

5.5 Plenary Discussion

In plenary, the women asserted that chiefs grab land from women and other vulnerable groups. This assertion was supported by the youth and ADC members. But the chiefs did not agree with these assertions arguing that, as chiefs, they protect everyone. But the women youth and ADC members maintained their assertion and demanded that the power of the chiefs over the land be reduced. They expressed hope that land registration as prescribed by the CLA would help to protect vulnerable members of the community from losing their land to chiefs and rich powerful people.

But chiefs maintained their stand and expressed that the new Act is not needed because it does not reflect what is on the ground. They argued that land is a deep cultural issue which cannot be reduced to a mere debate about women and good governance. It must be understood that chiefs exercise and enjoy respect and prestige partly because of their overriding power over land in their respective villages and communities. Taking away such powers and giving it to committees or an outsider called a 'Land Clerk' may

unsurprisingly result in a strong war with the chiefs. One chief summarised their view as follows;

'We are Chewa people. The way we manage land here is in line with our Chewa culture and traditions. If you bring the new customary land act, then you will be changing our Chewa identity'.

In the course of discussions, it was interesting to note that the women and the youth recognised the important and indispensable role of chiefs in ensuring that land is not just sold like tomatoes on the market. Despite their demands for change, these two social groups requested that no land transactions should be made without the blessing and approval of the chiefs. Their view was that if chiefs do have some control over land transactions, people will sell their land and become landless.

The ADC members raised an important point for discussion, bordering on marriage and peoples' access to land. The group explained that women who relocate to husbands' homes access farmland from their husbands' place. This form of access to land had some interesting discussions on what happens in the event of death (particularly of the partner who was owner of the land) and divorce. It was revealed that age, behaviour, decision to marry again and whether there are children or not in the family all contribute to determine the scenario which unfolds upon death of the spouse or divorce.

Scenario 1: If the spouse dies and the widow(er) is still energetic (young) and ready to marry again but has no children they lose the land

Scenario 2: If the spouse dies and the widow(er) is still energetic (young) and ready to marry again but has children, the land is kept for the children until they are of age to marry. *(What was not explored here is whether the widow(er) can access the land for the livelihood of the children).*

Scenario 3: If the spouse dies and the widow(er) is not ready to marry again but has children, the widow(er) has access to the land plus the land is kept for the children until they are of age to marry.

6. Conclusions of Facilitation Team

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

Access, control and land tenure security is embedded in the culture of the Chewa people of Kasungu. The Chewa are culturally matrilineal and land matters are expected to be for women. But some aspects of this culture are changing from women being the owners to men becoming owners of the land. This is because, upon getting married, women no longer live in their natal villages but in the village of their husbands. In terms of security, females have less secure tenure rights as they lose land upon death or divorce.

Chiefs have not been successfully persuaded about the need for the CLA. For them, land is a deep cultural issue which cannot be reduced to gender and governance discourses only. The role of these chiefs on land matters is important and indispensable in ensuring that people do not lose land. The chiefs should therefore be recognised as important decision makers on land matters.

Land administration and land dispute settlement systems is by the clan leaders and traditional chiefs. This system has worked over generations to ensure secure land tenure for both women and men such that no one could just wake up and claim land that is not theirs.

It is therefore important to critically look at the CLA and assess how much power it still gives to chiefs and the clan. The community dialogue sessions have demonstrated that, in the area of Senior Chief Lukwa, whatever direction the CLA takes, it cannot afford to ignore the interests of chiefs and the clan.

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

The women see the CLA as the law that empowers and protects them, the youth, and the poor from land grabbing from powerful members of their society including chiefs, men, and the rich. The youth agree with women and they look at the CLA as youth-friendly as it empowers them to enjoy security of tenure over the land given to them by their parents because they will be able to register the land allocated to them by their parents. Parents

will also be barred from reclaiming the land from the youth once allocated. However, the chiefs fear that the CLA will change and erase the Chewa culture and bring more conflicts among the people. They fear that, through registration, the CLA will reduce the power of chief, lineage, family and parents over land and make the land an individual's property for the individual to dispose of as he or she wills. This will bring too much freedom to the people as they will not be required to act in the interests of the family since the land is an individual property. The ADC members see the CLA as a change to the status quo on land matters and that these changes will only benefit the rich.

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

The women, ADC members and the youth agree that there should be equal rights for men and women, boys and girls when it comes to access to land from parents. In this case men and women should be inheriting land from their parents without considering their existing traditions.

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

Some pathways for resolving land contests and issues have been identified as follows:

- i. Customary land should be registered to protect vulnerable members of the community from losing their land to chiefs and rich powerful people.
- ii. Concerns about tenure insecurity have been identified. Instead of bundling land tenure security in registration only, the proposal is for a hybrid system, which combines the use of boundary markers, clan history and chiefs to ensure security of tenure over customary land.
- iii. Women, the youth, and local development committee members are all in agreement with the provisions in the CLA and look forward to the operationalisation of the same. Chiefs do not want the system to change. Perhaps a system of customary land governance that tries to balance the positions and interests of these opposing groups can create a hybrid that protects the interests of women, the youth and the local development committee while at the same time safeguarding the needs of the chiefs to retain some power.

7. References

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8. 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				