



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 Paramount Chief Lundu in Chikwawa 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 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

The people in area of Paramount Chief Lundu are predominantly the Mang'anja. Their society is matrilineal and they follow a matrilineal system, whereby family members reside in the village of the mother. The common marriage practice has been matrilineal uxori-local, where a man resides in the village of his wife. But this practice is changing because of the influence of the Sena, who are found in the neighboring district of Nsanje. The Sena are patrilineal and they follow a patrilineal system, where members of the family reside in the village of the father. The common marriage practice is patrilineal-virilocal, whereby upon getting married, a woman resides in the village of her husband. Due to the influence of the Sena, the Mang'anja now practice a matrilineal-virilocal system, where a woman resides in the village of her husband in a matrilineal system.

4.2 Major agricultural activities/projects in the area

The area of Paramount Chief Lundu in Chikwawa hosts Malawi's biggest sugarcane production estate and its sugar processing company under the multinational corporation Illovo at Nchalo. Most of the land in the area is taken up by this sugar estate. In addition, a big chunk of the land is taken up by the state-owned Lengwe National Park. There are also large projects aimed at land consolidation and agricultural transformation in the area. Most of the smallholder farmers in the area grow cotton, rice, and sorghum.

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

The area of Paramount Chief Lundu is one of the pilot areas for the implementation of the CLA. The Paramount Chief indicated that his Traditional Authorities (TAs) had just been briefed about the new Act. In addition, the process to demarcate boundaries for the TAs has just started, but there are some disagreements among chiefs about boundaries and thus none has agreed to sign the new maps.

4.4 Description of the stakeholders consulted

The meeting took place on November 29th, 2018. Table 1 provides details of the stakeholders consulted, who included:

- Dr Paramount Chief Lundu
- Group Village Headpersons
- 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.
- The youth

Table 1 Stakeholders consulted

Stakeholder group	Detail	Male	Female
Chiefs	Paramount chief Lundu	1	0
	Group Village Heads	3	3
	Village Heads	3	3
Area Development Committee	NGO, government staff, private sector, chiefs	6	0
Women Empowerment Group	Women from the area of Inkosi Mpherembe, who have been trained in land rights and advocacy by LandNet	0	7
Youth	Youth group	4	5

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 5 to 10 years. Finally, the groups were asked to assess the implications of proposals in the CLA for these themes. See Appendix 1 for the checklist that is 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 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 customary land law

Only one woman out seven women in the group was well aware of the CLA. That woman had attended an awareness meeting held by government.

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

Currently, land is owned by men in the clan. It is passed on from parents mainly to sons. This is a shift from the traditional practice where land used to go to daughters. Previously men used to live in their wives’ villages, but now there is a change whereby women are the ones that leave their natal villages to live with their husbands. So men inherit the land from their parents and wives’ use the land belonging to their husbands. Other forms of access to land include renting and buying. The land that is bought is usually owned jointly by the wife and husband. However, the most predominant mode of access is inheritance.

In terms of tenure security, currently, chiefs, clan and the family provide security to the land that belongs to the clan. For the land that is bought, the chief and the family provide a written agreement endorsed by the chief to verify the purchase. Others plant trees and vetiver grass on the borders of fields as markers of ownership.

In terms of control, for clan land and where the women have followed the husbands, control is in the hands of the husband but women are usually consulted on how to use the land. In case of land that the family has jointly acquired, the women are equally involved in controlling and using it.

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

In the next five to ten years, the women would like and love to see that parents should consider their daughters as inheritors of land. Thus it would be better to revert to the old practice where women inherited the land. The problem with the current situation is that women have problems getting land when they return from their marriage because the land is taken by the brothers. Again, in the next 5 to 10 years, the clan and the family should have more control in the case of clan land, but the role of chiefs should be minimised to avoid abuse of power by these chiefs, who are fond of grabbing land to sell.

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

The women felt that the new law would give them a chance to own the land. In the current situation, there is tenure insecurity both in their husbands' villages and in their natal homes as brothers are telling them to get the land from their husbands. In their husbands' villages they are not recognised as owners of the land.

5.2 Consultations with Chiefs

5.2.1 Awareness and knowledge about the CLA

All the eleven chiefs including the Paramount indicated that they were aware of the CLA because LandNet has been briefing them. However, only the Paramount Chief and three other chiefs seemed to be conversant with the details of the CLA because they have been attending meetings.

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

The first issue discussed was access to and ownership of customary land. The chiefs indicated that the people are Mang'anja and they are matrilineal. Under this system, upon

getting married, a man leaves his home and resides in his wife's home. He uses the land that belongs to his wife. The woman is the owner of the land and she accesses it through her mother. According to this practice, the man does not own the land but accesses it through his wife. However, there are some changes in the marriage systems because of interaction with the Sena tribe. The changes are that women now live in their husbands' homes. Due to this change, women do not own the land but only have user rights. It also happens that a woman loses the land in her natal village once she resides in her husband's village.

Other forms 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
- Purchase of land. This a rare mode of access for fewer people

The second issue discussed with the chiefs was land tenure security. The chiefs revealed several cases of land tenure insecurity. They indicated that customary land in Chikwawa is not secure because corrupt and cruel chiefs sometimes snatch land from vulnerable people and either sell it to people with money or to large companies such as the Lengwe National Park and the Illovo Sugar Company without any compensation for the owners. In addition, among the Sena tribe in Chikwawa who practice patrilineal system of marriage and inheritance, widows are chased away from the land that they have been using with their husbands once the husband dies. In other cases, women are forced to accept wife-inheritance to avoid losing the land left behind by their late husbands. Women who live in their natal villages with their husbands are insecure because there are cases where brothers are chasing their sisters off the land, claiming that they should get the land from their husbands' villages. Actually, it is not safe for a man to reside in his wife's village.

The third issue was about control over the land or land governance. The chiefs indicated that control over the land is in the hands of the lineage. Members of the family cannot sell the land when other members do not have enough. If one tries to sell, family members stop the transaction. Some of the chiefs also controlled the land and settle disputes. With regards to how the land is used, the husband controls what to grow on the land. Of course a woman controls the land she owns just as men do. A man cannot sell the land belonging to the woman (wife), while a woman cannot sell the land belonging to the man (husband).

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 access and ownership of the land the chiefs would like or love to see that inheritance practice continues in the next 5 to 10 years because it is the only mode of access and ownership which enables the poor and women to access land.

In terms of the future of tenure security, the chiefs would like and love to see every owner of land having title deeds. In agreement with the Paramount Chief, they see land registration as a solution to tenure insecurity. However, some chiefs expressed fears that registering land to get land ownership certificates will only favour the rich members of the community because the poor and other vulnerable members cannot manage to pay for the registration process. According to these chiefs, land registration is a complicated process that cannot be understood by the poor and the less educated.

In terms of control, the chiefs would like and love to see that women should have more control over the land they use in the next 5 to 10 years.

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

If the law is implemented as it is, women will gain the land from their husband because they are already losing land in their natal villages. However, registration alone may result in land becoming an individual property. This might give individuals the freedom to sell the land, thereby becoming landless.

5.3 Consultations with Area Development Committee

5.3.1 Awareness and knowledge about the CLA

The ADC members said they just hear about the new Act from the Paramount chief and they have not been told the substantive issues provided in the CLA.

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

On access to land, the ADC members emphasised that two systems co-exist side-by-side in the area. There are the systems of the Mang'anja people and Sena people. Ordinarily, Mang'anja tribe people practice matrilineal-uxorilocal (*chikamwini*) but due to the influence of the Sena culture, some Mang'anja people practice matrilineal-virilocal (*chitengwa*) whereby the woman moves from her village to join and stay at her husband's village. In this regard, predominantly men access land by inheriting land from their paternal parents. In addition, men rent or buy land from chiefs or fellow villagers that have more land than they need. In other cases, men are given land by their chiefs upon request. According to the ADC members, poor men have fallen victim to land grabbing by powerful chiefs in the area. The chiefs have at times sold land to outsiders and this is land that belongs to some defenceless men in the area.

Women residing in the village of the husband use the land belonging to their husbands. Such women do not culturally qualify to inherit land from their parents because they are expected to be "married off". However, some Mang'anja women still reside in their natal villages and, in these cases, women inherit land from their parents.

In terms of tenure security, the ADC members report that, currently, customary land is not secure because some chiefs are grabbing land from vulnerable people to sell it. The situation is getting worse for widows who are chased away from the land they have been using with their husbands once the husband dies.

When it comes to the issue of control over land, the ADC members revealed that control over land in the area is dependent on which system of inheritance is in operation in a household. For Senas, who are patrilineal, men have all the controlling powers over land in the households. For Mang'anjas (practicing a matrilineal system) women have powers over land to the extent that men are chased away and stopped from cultivating their wives' land following either divorce or death of the wife.

At Community level, power over land is in the hands of the chiefs. Chiefs can allocate anyone's land without the owners' consent for community development projects and no one can stop the chiefs from doing this.

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 light of the increased vulnerability of women who lose land upon the death of the husband and the men who are abused under *chikamwnini*, the ADC members would like and love to see that in the next 5 to 10 years all customary land should be registered and that every person who has land has a title deed. Registration would also prevent land grabbing by chiefs or other powerful members of their society. But the process of land registration should be made simple and affordable even to the poor, so that even the poor, women, and orphans should be able to register their land.

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

According to the ADC members the provisions in the CLA will empower women and the poor in as far as land use, access, tenure and control are concerned. "With land registered and everyone having title deeds for their land, women and the poor will no longer be pushed around by the powerful chiefs and the rich who attempt to grab their land. Land rights for widows will be greatly enhanced as currently widows under the patrilineal system lose their land the moment their husbands die."

5.4 Consultations with the Youth

5.4.1 Awareness and knowledge about the customary land law

The youth are aware about the CLA. They even know that the new law promotes registration and the issuing of titles to land to ensure ownership.

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

The youth reported that they are mostly allocated parcels of land by their parent once they get married. In some cases, the village headman allocates the land to some people for settlement and residence. Other people use the land from the schemes to grow sugar. The other modes of access include renting for a period of 1 year. Usually, people are reluctant to enter into longer rental contracts for fear of losing the land to the tenant. The land that is close to Shire River, which is ideal for irrigation farming, is more expensive to rent compared to the land away from the river.

In terms of tenure security, currently, family, clan and local leaders who have the history of the various pieces of land ensure that there is security over the land the members of the family are using. Others plant markers such as vetiver grass, trees and sisal to demarcate ownership. There are pockets of tenure insecurity especially among the men who live in the villages of their wives. The youth reported experiences of the men especially those from Thyolo and Mulanje who practice *chikamwini* and have had cases where they have been kicked out of a marriage once they make investments in the wife's home. Most men who are natives of Chikwawa are reluctant to relocate to the wife's place for fear of being chased by their wife's relatives. So, it is the woman who migrates to her husbands' place but she also risks being evicted upon death of the husband.

In terms of control, in the villages which are predominantly matrilineal, control of the land remains with the women but use is based on discussions between husband and wife. In matrilineal virilocal villages control is by the husbands.

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

In the coming five to ten years, the youth foresee that land rentals and purchase of land will be the dominant modes of access to land. This will result in only the rich having land.

In terms of tenure security, the youth have had prior exposure to the CLA and they feel strongly that the issuance of land certificates is the ideal situation they would love to see. However, the youth are worried about corrupt traditional leaders. They feel that corrupt leaders are a challenge to the process of validating who owns which piece of land before land certificates are issued. Despite being corrupt, the youth 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.

In terms of control, the youth would love to see that men and women have more shared control, but acknowledge this would require a lot of gender awareness and advocacy.

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

The youth see that the CLA will enhance informal land markets which are already in place in the area. The result will be an increase in selling of customary land. This is not a good

development because customary land is not for sale. If allowed, only the rich will own the land because they can afford it.

6. Plenary Discussion

The first point discussed in the plenary was awareness about the CLA. Members emphasised that they were not fully aware of the Act because Government has been reaching fewer people with the message that it has produced a new law on customary land (*malo amakolo*) and that people should get ready to follow it. Not much has been explained about the contents of the new law.

The ADC members argued that, currently, customary land in Chikwawa is not secure because corrupt and cruel chiefs sometimes snatch land from vulnerable people and either sell it to people with money or sometimes the land is used for community development projects without any compensation to the owner of the land. In addition, the emerging *chitengwa* (viirilocal) is making women vulnerable. It is common to see widows chased away from the land that they have been using with their late husbands. In some cases, women are forced to accept being inherited themselves so that they should not lose the land left behind by their late husbands. This is bad.

While all is not well for women under *chitengwa*, the same is the case for men under *chikamwini* (uxorilocal). The ADC members complained that wives abuse men under *chikamwini*. After developing the home for the wife, building an iron-sheet roofed house and educating the children, the wife chases the husband to go back to his home when they are already too old and less active economically. In other cases, the women kill their husbands so that they can enjoy the wealth alone. According to the ADC members, because of these fears, *chikamwini* is demotivating men from making meaningful investment in their wives' land because the likelihood of being chased away or divorced by the wife is high. The ADC members bemoaned the fact that these days every person and organisation favours women. In their view, men are seen by many human rights or women empowerment NGOs and courts as evil and as always guilty. "*We men have nobody to protect us*". The world is for women and yet some men are suffering under *chikamwini*. The female members of the ADC were just smiling and efforts to make them comment on the allegations against women under *chikamwini* failed. At the end all

participants agreed that government and NGOs should start protecting men in the *chikamwini* system.

On land tenure security, ADC, chiefs, women and the youth agreed that there is insecurity in the area of Paramount Chief Lundu because of corrupt and cruel chiefs and the *chikamwini* practice. As a way to enhance security of tenure, ADC members proposed that a solution would be for the land to be registered as provided for in the CLA. However, some chiefs and women expressed fears that registering land to get land ownership certificates will only favour the rich members of the community because the poor and other vulnerable members of the community will be able to afford the costs of registration. In addition, according to the participants, land registration is a complicated process that cannot be understood by the poor and the less educated.

In their submission the youth indicated that the CLA is good as it will enhance land ownership. They hoped with time people will gain more experience with the new Act such that land tenure will be more secure with the land certificates. But they feared that, as buying land will become common, those without money will be sidelined in the land markets. The youth also foresee increased pressure on land and encroachment on idle estates by those not able to participate in the land market. In agreement with the youth, the women pleaded that parents should share the land they are holding with their children. But the women feared that there is not much land and there is a possibility that very soon there will be no land to share.

7. Conclusions of Facilitation Team

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

Currently, the situation with clan land varies, with women controlling the land in some cases, while men also own the land. Still the dominant mode of access is inheritance. The clan, mainly the chiefs and family members, plays a big role in ensuring tenure security. While women have culturally been in control of the land, the change in marriage systems, where women stay in their husband's villages, has reduced the power of a woman over

the land. There is a strong agreement among the women, chiefs, and ADC members that both men and women are victims of the current situation.

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

The CLA is a welcome idea to ADC members as the provisions such as land registration will reduce the power of the chiefs and the rich who are taking away land from the poor. The CLA is also a good law as it empowers women and the poor to use, access, secure and control the land when registered. But the CLA, through registration, will turn the land into individual property. This might give individuals the freedom to sell the land, thereby become landless.

The youth see the CLA enhancing informal land markets and this will result in an increase in selling of customary land. This will concentrate the land in the hands of the rich. The women see the CLA as a chance for them to own land and become protected from their brothers, who are taking away the land on the basis that these women should get land from their husbands. But in their husbands' villages they are not recognised as owners of the land.

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

The women would like and love to see that daughters continue to inherit customary land from their mothers. Thus, the old practice where women inherited the land is better and should continue. In this case the clan and the family should have more control over the land. The role of chiefs should be minimised to avoid cases of abuse. Chiefs are in agreement with women that in terms of access and ownership the inheritance practice where women inherit the land should continue because it is the only mode of access and ownership that would enable the poor and women to access land. In terms of tenure security, the chiefs would like and love to see every owner of land having title deeds. But land registration is a complicated process that the poor cannot afford. It will therefore only benefit the rich members of the community. The chiefs would also like and love to see that women should have more control over the land they use.

The ADC members, concerned with increased vulnerability of women who lose land upon the death of the husband and the men who are abused under *chikamwnini*, would like and love to see that all customary land is registered and that every person who has land has a title deed. The area should also be registered to prevent land grabbing by chiefs or other powerful members of their society. But the process of land registration should be made simple and affordable so that the poor, women and orphans should afford it.

The youth see issuance of land certificates as the ideal situation for customary land. These youths see corrupt leaders as a challenge to the process of validating who owns which piece of land before land certificates are issued. It is therefore important that the role of chiefs be defined as one relating to land management due to their knowledge of the history of the land allocation in the area. In terms of control, the youth would love to see men and women have more shared control, but it needs a lot of gender awareness and advocacy.

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

Several things have to be done in order to resolve land contests and issues in the area. These include the following:

- i.** Clear sensitisation of the wider population on the contents of the CLA. It is clear that only the few that attended meetings by NGOs have knowledge of the new Act.
- ii.** The Ministry of Lands and Ministry of Justice as policy holders should clear up the misconception among villagers that people will be paying money to have their land registered.
- iii.** Land tenure insecurity is real in Chikwawa because of corrupt and cruel chiefs, rich influential people and *chitengwa* practice. As a way to enhance security of tenure the land should be registered as provided for in the CLA as a solution.
- iv.** However, land registration might favour the richer members of the society. Since registration is an important step, the process should be made simple and affordable for all.

- V. Land registration might provide freedom to individuals to sell the land, which under customary arrangement is not for sale. It is important that the role of clan and family to protect the land should be recognized in the CLA.

8. References

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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				