



Knowledge Innovation and Excellence

District Level Land Dialogue Report

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

Mzimba district is wholly patrilineal. It is a patriarchy society and rarely do women become chiefs in this area. Children belong to their fathers' side. Women live in the home of their husbands (*chitengwa*) and they mostly cultivate the land belonging to the husband.

4.2 Major agricultural activities/projects in the area

Tobacco is the main crop grown in the district. It is grown either on estates owned by both individuals and companies as well as through small-scale farming. The estates host a significant number of labour tenants largely from Southern and Central region districts of Malawi. Every household grows maize as a staple food crop. Other crops grown in the district include legumes such as soybeans, common beans, and groundnuts. The district has a higher per capita size of land holding, in contrast to the Southern and Central region districts of Malawi,

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

Mzimba, specifically Mpherembe area, was initially intended to be a pilot district for the implementation of the CLA. However, the pilot did not go ahead because chiefs rejected the project. This happened during sensitisation meetings by the Mzimba Lands Office and LandNet Malawi. During the meetings the chiefs, local development committee, women, and the youth were informed about the CLA and its provisions. The chiefs in Mzimba and members of Mzimba Heritage Association (MZIHA) did not like some of the provisions such as land registration, establishment of Land Committees and Land Tribunals. Among other issues identified by the chiefs, the new Act was interpreted as giving more powers to women over land, contrary to prevailing long-standing cultural norms in the area. According to the chiefs, the CLA is reducing their chieftaincy powers over land. They therefore feel dethroned. The chiefs in Mpherembe area and MZIHA have, therefore, resolved that there should be no activity relating to implementation of the CLA in the district. They have banned LandNet and Mzimba District Lands Office from undertaking any activities related to the piloting of the CLA in Mzimba district.

4.4 Description of the stakeholders consulted

The dialogue meetings took place on 20th December, 2018 at Mzimba District Headquarters. Table 1 provides details of stakeholders consulted, and these included:

- Police and judiciary officers. All the participating police and judiciary officers were originally from Mzimba. It is their home district. These officers are important for settling land-related disputes and conflicts.

- Civil servants. These are members of the District Executive Committee (DEC) but formed a separate focus group from the other DEC members because they were numerous. The civil servants are important decision makers at district level. They are involved in the implementation of the government policies. However, most of the civil servants were not originally from Mzimba district. Some of them had been working in Mzimba for less than 2 years so they may not have had much experience with land issues in the district.
- The District Executive Committee (DEC). These are decision makers at district level and they are influential in district decisions on rural development. Members provide technical input into district plans for development projects. Just as the case with some of the participating civil servants, some DEC members were not originally from Mzimba district. Some of them had been working in Mzimba for less than 2 years and, as such, may not have been very familiar with land issues in the district.
- NGOs/Civil Society. These are representatives of NGOs in Mzimba district. They are members of the DEC but they formed their own focus group discussion because the group was large.

Table 1 Stakeholders consulted

Stakeholder group	Detail	Male	Female
District Executive Committee	Members of the DEC including:		
	Director of Planning and Development	1	0
	District Agriculture Office	3	0
	District Lands Office	1	3
	Mzimba Heritage	1	0
	Media	2	1
Civil servants	National Registration Bureau	1	0
	District Forestry Office	2	0
	District Community Development Office	0	2
	District Social Welfare and Gender Office	2	1
Police and judiciary, all originally from Mzimba district	Police officers	1	0
	Magistrate	2	1
NGOs	NGOs/Civil Society	6	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 DEC, civil servants, police & judiciary, and NGOs/civil society 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 is used for the focus group discussions (FGDs). After the FGDs, the groups presented their discussions in plenary, where group members commented on other groups' presentations. Video and audio interviews were recorded as part of the process of generating evidence on how the CLA is envisaged to impact on land access, land tenure security and access to land among women, men, youth and the chiefs

5. Results of Focus Group Discussions

5.1 Consultations with Police and Judiciary officers

5.1.1 Awareness and knowledge about the CLA

The police and judiciary officers reported that have heard about the CLA but they have not seen it. The judiciary officers reported that they are failing to attend to land matters because they have heard that the law has stopped them from doing so. Under the CLA, land matters have to be handled by the tribunals and the high court.

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

The officers indicated that people in Mzimba are the Ngoni by tribe. According to their culture men are the owners of the land and they inherit from their fathers. Women, upon getting married reside in the village of the man (virilocal residence - *chitengwe*) and use the land that belongs to their husbands. In cases where a husband dies the woman stays in the village and continues to use the land belonging to the husband. Only in situations when a woman wants to marry again is she allowed to leave the village. The youth, especially boys, are allocated land by their fathers: mostly not until they get married. Girls are not allocated land because they use the land of their husband. Women who are not married get land from their fathers in their natal village. In some cases, women who return from their marriage also get land from their fathers. Other forms of access to land are mostly by those who have the money. These include:

- Access through renting. Rare because people mostly have enough land
- Buying land. This is common among immigrants to Mzimba

The second issue discussed with the officers was land tenure security. The major form of tenure security are the parents, especially the father. The father knows the history of the land and no one can claim it. However, the officers are concerned that the history is oral and not written. This makes this measure weak as in some cases members forget some important details about the land. The officers indicated that in Mzimba there are cases of tenure insecurity. Sometimes it is the chiefs grabbing land from their subjects or family members grabbing land from each other. The officers have been attending to cases related to family members fighting over the land or people encroaching the land. However, the officers have stopped attending to the cases because the law forbids them to do so. Some people use magic to protect their land.

The third issue was about control over land. The law officers indicated that chiefs and fathers are in control of the land that families use for farming. No one has the right to sell the land because they fear the chief and the father. In terms of controlling what and how to use the land, the officers indicated that husbands dictate what to grow

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

Beginning with access to and ownership of the land, the officers indicated that they would like and love to preserve the status quo, where men inherit the land. As for those women who return to their natal villages, their families should provide land for them to use. The officers indicated it might be impossible for a woman to own the land in her husband's village because that is against the culture of the Ngoni. Again, if the woman owns the land in her husband's village it will bring complications related to: what happens when the husband dies and the woman wants to marry elsewhere? How about if a woman brings children to her husband's village, will the step children inherit the land from their step father? In the current form, there is no problem with women who are considered permanent members of the husband's village. They have permanent access and use rights to the land that belongs to their husband.

With regards to tenure security, the officers would like and would love to see that the current form of security is enhanced by title deeds as proposed in the new customary land law because the security measures, such as the chief and family, are getting weaker.

However, the officers cautioned that title deeds are also sometimes weak as people do not respect them. It is therefore important that title deeds should not replace, but should supplement and complement the existing measure of tenure security (chiefs and family).

In terms of control over the land, the officers would like and love to see that women have more control over the use of the land and the benefits derived from the land.

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

The judiciary and police officers were worried that the CLA will give freedom to people to sell land. If this happens the poor will lose the land to the rich. The officers were also worried that the fees to be charged for registration might only be afforded by the rich. They therefore suggested that people should be allowed to register the land without paying the fees.

5.2 Consultations with District Executive Committee

5.2.1 Awareness and knowledge about the CLA

When asked about who was aware or had ever heard about the recently approved CLA, about 12 out of 36 (33.3%) indicated that they had heard about the Act. However, when the same question was posed to assess how many participants knew about the provisions in the CLA, only 6 out of 36 (16.6%) claimed to know some provisions.

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

The DEC members indicated that the current situation is that the major mode of access to customary land is inheritance. Husbands inherit the land from their fathers. Women do not inherit, but use the land belonging to their husbands. The sons are allocated land by their fathers. Girls are not allocated the land because they use the land of their husband. But women who are not married or have returned from their marriage get the land from their fathers in their natal village. Other forms of access to land are mostly by those who have the money. These include renting and buying the land.

In terms of tenure security, women's use of the land is secured through marriage. Generally, the clan provides security to the land that has been inherited. Chief also protect in their areas of jurisdiction. Some do this through magic. It is also common to see oral

history being used to protect the land. Others use land markers such as trees to provide security of tenure.

In terms of control, currently, the head of the household (the man), the chiefs and the clan/family are in control of 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

The DEC members indicated that in the next 5 to 10 years they would like and love to see women accessing land, not only through marriage. Laws should accommodate equal opportunities in access of land especially for women and the youth. But this will require changing the mindset of the chiefs and people in Mzimba. It might include helping people to prepare wills. But others were of the view that the status quo should be maintained because there are no serious issues with the current process. What is needed most is to accommodate women's access to land, especially those who are divorced or widowed.

In terms of tenure security, in 5 to 10 years, the DEC members would like and love to see that people in Mzimba should have certificates for their parcels of land. This will ensure that the land is protected. But this should be done without people paying fees. It is also the wish that in 5 to 10 years Government and Chiefs should reach a consensus on how to implement the CLA.

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

The DEC members feel that the new CLA is good and it should be implemented in the district. They even pleaded with chiefs to accept the Act because it will enable women to have secured access to land. They argued that it was wrong for the chiefs in Mzimba to reject the pilot project. They indicated that the pilot project has been transferred from Mzimba to Rumphu because chiefs have rejected it. In their view, Mzimba has lost an opportunity to be part of the most important project, which would have benefited the people.

5.3 Consultations with Civil Servants

5.3.1 Awareness and knowledge about the customary land law

While all the seven civil servants reported that they were aware of the existence of the CLA, only three reported having knowledge of the substantial provisions in the Act and its prescribed structures like the Village Customary Land Committees and the Village Customary Land Tribunals. Those that had the more detailed knowledge of the CLA gained it from the district orientation meeting that was conducted in Mzimba by LandNet Malawi. The orientation exercise targeted members of Mzimba District Executive Committee (DEC) and it was part of the activities to pilot the CLA. However, as noted earlier, these activities were halted by chiefs and Mzimba Heritage Association.

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

Starting with the theme of access to and ownership of the land, the civil servants reported that the main way of accessing land in Mzimba is through inheritance from parents. It is the male children who are shared land from their parents. For women, they access land that belongs to their husband when they get married. Now that a significant proportion of young men in Mzimba have travelled to South Africa in search of greener pastures, most of the land they leave behind is left in the hands of their wives. Some people with money are also buying the land at Mzimba Boma. The sellers of land are often young people who are trying to raise funds for passport and transport to travel to South Africa.

In terms of land tenure security, there were opposing views among the civil servants with regards to the effectiveness of the current customary tenure security system. According to about 30% of the civil servants, the current land tenure security which is based on customs and traditions and provided by the traditional chiefs and clan leaders is effective and there are no threats to security of tenure of customary land. The civil servants who did not support the new CLA are those whose original home is the Northern region of Malawi. According to these civil servants, the CLA is providing solutions to a problem which does not exist because, as far as they are concerned, women in Mzimba enjoy secure customary land tenure even when their husbands die. They argued that upon the death of husband, the widow is free to choose to stay at the husband's home and continue using the land left behind by the late husband. Other widows, however, not because they

are being chased away, choose to go back to their original homes where their brothers share land with them to construct a house and cultivate.

But other civil servants, especially those for whom their original homes are not in the northern region, supported the CLA, touting it as a great opportunity to empower women and secure women's land rights in Mzimba. According to these civil servants, Mzimba is a conservatively patriarchal society with clan leaders and tradition leaders that do not recognise women when it comes to sharing/allocating land. They bemoaned the long-standing suffering that women go through when their husbands die or when their husbands divorce them, situations that make Mzimba women landless. Because women do not own land in Mzimba, some women even are forced to remain in abusive marriages for the sake of maintaining their access to their husband's land. One participant pointed out that traditional chiefs in Mzimba are very powerful and no one can question them even when they grab someone's land, even including land belonging to Mzimba men. The traditional leaders can order anyone to vacate their own land. The civil servants claimed that they had evidence that land rights in Mzimba are not secure even for men.

Still in relation to land tenure, some civil servants felt that chiefs in Mzimba enjoy security of tenure because they are perceived to have the strongest magical and witchcraft powers. This perception scares away anyone from daring to snatch or tamper with the land that belongs to traditional leaders. As one participant said "*Chiefs land is untouchable. If you want to live long, then don't try to snatch away land that belongs to chiefs*". For young people, one participant said that their security of tenure comes from the young people's threat of violence. "*Young people are physically strong and have at times beaten elders and chiefs who tried to take away their land. So people are scared of young people*".

Moving on to the theme of control over land, according to the civil servants from Mzimba, at family level it is an unchallenged fact that land is under the control men/husbands. Men make all decisions over land at household level. However, in recent times, many women in Mzimba are making decisions over land through authority delegated by their husbands who have migrated to South Africa, in search of economic opportunities. With men absent in most households, one can conclude that the current control over land that women are

enjoying in Mzimba is only delegated temporary power and as soon as their husbands return, the power will return to its owners, the men.

At community level, power to make decisions over land rests with the chiefs. In Mzimba, unlike in other cultures, chiefs are very powerful. Chiefs in Mzimba can claim any land within their area of chieftaincy and declare it their own or sell it to any with money. According to some participants in the FGDs, even with the CLA in place, chiefs in Mzimba will still remain powerful figures over land matters because the committees set up under the Act will be nominated by the chiefs and the chiefs are more likely to nominate individuals who have unflinching loyalty to the chiefs.

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

Thirty percent of the civil servants whose original home is Northern region say that there is no need for any change because the traditional way of managing and governing land issues led by traditional chiefs in Mzimba is working perfectly well in Mzimba and serving the interests of everyone according to their cultural parameters. These civil servants argued that Mzimba has more than enough land for everyone and land governance challenges are non-existent in the district. These civil servants would like and love to see that any new laws should also be accommodative of the Ngoni culture

On the other hand, 70 percent of the civil servants are pro-change and they would to see women having equal access and control over land as men in Mzimba. Under the CLA, the prescribed land committees will have 50 percent women representation. This is seen as a way of achieving the desired gender equality in land governance and access and control.

Another change they would love to see happen in Mzimba is for every piece of land owned by everyone being registered to government and every land owner having title deeds.

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

According to those against the CLA, the Act will disrupt the long-held cultural relations and traditions with regard to land governance in Mzimba. The CLA is not in line with the existing traditional land governance system in Mzimba and the implications are that

traditional leaders will become obsolete and disrespected. In addition, the CLA will give more advantages to women as they will have land at both their parents' home and the husband's homes.

One female civil servant, speaking against the new CLA, said the new Act will make Mzimba women selfish and arrogant because it will make them be able to own land both in their natal village and their husbands' home whereas men will only own land in their natal village. In addition, the CLA, if implemented in Mzimba, will weaken marriage ties as women will no longer respect their husbands because they have their own land back home, a situation which will result in more cases of divorce in Mzimba. The security provided by traditional chiefs is culturally appropriate in Mzimba and, in contrast, the new Act would be culturally disruptive in the district. The civil servants therefore look forward to a future where the status quo on culturally-based land tenure security will be maintained.

But other civil servants touted the CLA as a great opportunity to empower women and secure women's land rights in Mzimba. These civil servants are looking forward to a future where the new Act will be operationalised in the district and everyone who owns land in Mzimba will have a land registration certificate which will protect their land from land grabbers like traditional chiefs. These civil servants pointed out that the absence of land registration certificates in Mzimba looks like a small problem now because of the low population. Mzimba's per capita land holding is the largest in Malawi and the current customary land tenure security partly comes from the fact that Mzimba has abundant land resources. This is misleading. However, with the population of Mzimba steadily growing, a few years from now Mzimba will start experiencing land disputes at family, clan, and community levels and the registering of land under the CLA is a proactive way of limiting projected future land disputes.

5.4 Consultations with NGOs

5.4.1 Awareness and knowledge about the CLA

The participants from the NGOs were asked if they were aware of the CLA. Out of the ten NGO members, only four indicated that they were aware of the new law. This is similar to findings from other focus groups, that showed that few people are aware of the CLA .

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

The NGO members reported that according to the Ngoni culture men are the owners of the land which they inherit from their fathers. Women, upon getting married reside in the village of their husbands and use the land that belongs to their husbands. Table 2 below summarises the land issues discussed with the NGO group.

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

<i>Land Issue</i>	<i>Now</i>	<i>Would love and like to see in 5 to 10 years</i>
<i>Access</i>	Inheritance	Maintain the current practice because there are no serious issues with the current process. But there is a need to accommodate women's access to land, especially those divorced/widowed
<i>Control</i>	Clan/Family	The land should be registered and certificates issued. But there should be fees attached
	Household, especially men	Household members to have equal access to land
<i>Tenure Security</i>	Leasing	Land certification should be encouraged
	Family, oral history, boundary markers such as trees	These should continue alongside with land certificates. They should not be displaced

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

The NGO group members expressed concerns with the CLA. They feel that implementation will result in the chiefs losing control over land. There is also suspicions about how the land certificates are going to be issued.

6. Plenary Discussion

During plenary, the participants emphasised that, at district level, they have heard about the CLA but they are not fully aware about what the law says.

All stakeholders agreed that the current situation is that men have ownership and user rights while women only have user rights. But there are opposing views within the group between where those who are originally from Mzimba, who feel that the status quo should continue, and those not originally from Mzimba, who feel there is need to accord women both ownership and user rights to land.

In the plenary session there were also opposing views among the civil servants on the effectiveness of the current measure for tenure security. About 30% of the civil servants, those originally from Mzimba district, feel that the current land tenure security which is based on custom and traditions and provided by the traditional chiefs and clan leaders is effective and that there are no threats to security of tenure of customary land. According to these civil servants, the CLA is providing solutions to a non-existent problem.

Those civil servants not originally from the district maintained that Mzimba is a conservatively patriarchal society with clan leaders and traditional leaders that do not recognise women when it comes to sharing/allocating land. They maintained that women suffer when their husbands die or when their husbands divorce them, situations which make Mzimba women landless. They therefore maintain that the CLA will accord everyone security of tenure regardless of gender.

The plenary session also discussed land registration. Participants agreed that while land registration will give power to the women to own land, care should be taken as registration can give people the freedom to sell the land without the agreement of their family members. The differences in opinion continued with some (30%) against the CLA which they view as disruptive and unnecessary change solving a non-existent problem. On the

other hand, the police, judiciary and NGOs (except Mzimba Heritage Association) agreed that the CLA is really important and will address challenges currently choking customary land governance in Mzimba.

In terms of control, the civil servants from Mzimba (minus police and Judiciary) revealed that at family level land is under the control of men/husbands. Men make all decisions over land at household level. However, in recent times, many women in Mzimba are making decisions over land because husbands have migrated to South Africa, in search of economic opportunities. With men absent, it is concluded that the current control over land that women are enjoying on Mzimba is only delegated temporarily power and as soon as their husbands return, the power will return to its owners, the men.

The participants expressed the view that most government policies are good, but they are usually developed in a rush and usually don't reflect either the voices of the people on the ground and the different contexts pertaining in the country. As a result, policies end up being problematic for different contexts. People are very suspicious about how the land certificates are going to be issued: whether they going to be long term or short term, and whether they will translate to temporary land ownership.

The NGO group complained that there is lack of sensitisation about the CLA. This situation is making people unaware of what the pros and cons are of accepting the new Act. Where sensitisation has taken place, the approach has been top down and mix people with different social status together, for example mixing Chiefs and their subjects. This is problematic within the Ngoni culture. The other problem is that LandNet's attitude has been that of 'take it or leave it', without giving people space to voice their concerns.

The NGO group also expressed concerns and suspicions about the idea of using elected committees to operationalise the CLA. They feared that, from experience, elected or voluntary committees usually perform badly.

7. Conclusions of Facilitation Team

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

Civil society, civil servants, the law enforcers and DEC members agree that access, control and tenure security are embedded in the culture of the district, where the land belongs to men. The major form of access to land remains inheritance, where men inherit the land from their fathers. The same applies to tenure security and control over the land, where culture and traditions has bestowed authority of customary land in the hands of chiefs, family and the clan. There are cases of land tenure insecurity, where chiefs have been reported to grab the land from their subjects or family members grabbing land from each other.

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

A number of perspectives have been identified with regards to the extent to how the CLA addresses current and future situations and aspirations. These include:

- The judiciary and police officers were worried that the CLA will give freedom to people to sell land. If this happens the poor will lose the land to the rich.
- Some civil servants and DEC members feel the CLA is a great opportunity to empower women and secure women's land rights in Mzimba.
- Some members of the DEC look at the CLA as disruptive to the long-held cultural relations and traditions with regard to land governance in Mzimba. The Act is not aligned with the existing traditional land governance system in Mzimba and the implications are that traditional leaders will become obsolete and disrespected.
- The NGO group generally expressed scepticism of the benefits of the CLA for the people of Mzimba district.

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

Some civil servants and law enforcers would like and love to see continuation of the current status quo, where access, control and access to land remain embedded in the culture of the Ngoni people of Mzimba. These officers see it as undesirable for a woman to own the land in her husband's village because that is against the culture of the Ngoni. They claim that women do not face any problems because they have permanent access and use rights to the land that belongs to their husband.

With regards to tenure security the officers would like and would love to see a hybrid of culturally held tenure systems used alongside title deeds as proposed in the CLA because the tenure security measures such as those provided by chief and family are getting weaker. However, it is important to note that title deeds are perceived as also having the potential to be weak – the best solution being for them not replace but to supplement and complement existing measures to ensure security of tenure (chiefs and family).

Some DEC members would like and love to see Ngoni culture change and allow for equal access and control over the land between men and women. Other DEC members would like the status quo to be maintained but with some modification to accommodate women's access to land, especially those divorced/widowed. The DEC members would also like and love to see people in Mzimba having certificates for their parcels of land to ensure that the land is protected.

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

The most notable pathways for resolving land contests and issues in Mzimba is a hybrid of the Ngoni culture and the provisions in the CLA. This hybrid will reflect real voices of the people on the ground and the different contexts found in the country.

Another pathway to handling land contests and issues is to use a dialogue approach to communicate the implementation of CLA. In such an approach, all key stakeholders such as the chiefs and members of the Mzimba cultural grouping should be honestly and genuinely engaged so that their issues and concerns are heard and they can be engaged together to see how their fears and misgivings can be addressed.

8. References

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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				