



*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 Inkosi Mpherembe in Mzimba District

By

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

Sustainable Agricultural Intensification Research and Learning in Africa (SAIRLA) is a five-year, DFID-funded programme (2015–2020) seeking to generate new evidence and design tools to enable governments, investors and other key actors to deliver more effective policies and investments in sustainable agricultural intensification. The programme covers six countries in sub-Saharan Africa – Burkina Faso, Ghana, Ethiopia, Tanzania and Zambia.

Over the course of the programme, SAIRLA partners have generated new evidence and design tools to enable governments, investors and other key actors that are supporting agriculture commercialisation and intensification to deliver more effective policies and investments. As part of this work, SAIRLA supports eight research projects that have successfully generated new evidence, and five national learning alliances that have been established to channel high quality evidence into national investment and policy making processes using a social learning approach.

## Table of Contents

|   |    |
|---|----|
| <b>1. Introduction</b> .....  | 5  |
| <b>2. Background to the dialogue process</b> .....  | 6  |
| <b>3. The Customary Land Act (2016)</b> .....   | 7  |
| <b>3.1 On-going processes in relation to the Customary Land Act (2016)</b> .....  | 8  |
| <b>3.2 Major, relevant and related provisions in the Customary Land Act (2016)</b> .....  | 8  |
| <b>4. Methodology</b> .....   | 9  |
| <b>4.1 Social characteristics related to land issues in the area</b> .....  | 9  |
| <b>4.2 Major agricultural activities/projects in the area</b> .....   | 10 |
| <b>4.3 Activities related to implementation of customary land law in the area</b> .....   | 10 |
| <b>4.4 Description of the stakeholders consulted</b> .....  | 10 |
| <b>4.5 Method for district consultations</b> .....  | 11 |
| <b>5. Results of Focus Group Discussions</b> .....  | 12 |
| <b>5.1 Consultations with Women</b> .....   | 12 |
| 5.1.1 Awareness and knowledge about the CLA.....  | 12 |
| 5.1.2 The current situation of land issues – access/ownership, tenure security, control<br>for the poor, youth and women .....                | 12 |
| 5.1.3 Changes would like to see in access/ownership, tenure security, control for the<br>poor, youth and women in the next 5 to 10 years..... | 14 |
| 5.1.4 Implications of proposals in customary law on access/ownership, tenure security<br>and control by the poor, women and the youth .....   | 14 |
| <b>5.2 Consultations with Chiefs</b> .....  | 15 |
| 5.2.1 Awareness and knowledge about the CLA.....  | 15 |
| 5.2.2 The current situation of land issues – access/ownership, tenure security, control<br>for the poor, youth and women .....                | 15 |
| 5.2.3 Changes would like to see in access/ownership, tenure security, control for the<br>poor, youth and women in the next 5 to 10 years..... | 17 |
| 5.2.4 Implications of proposals in customary law on access/ownership, tenure security<br>and control by the poor, women and the youth .....   | 17 |
| <b>5.3 Consultations with Area Development Committee</b> .....  | 18 |
| 5.3.1 Awareness and knowledge about the CLA.....  | 18 |
| 5.3.2 The current situation of land issues – access/ownership, tenure security, control<br>for the poor, youth and women .....                | 18 |

|            |  |           |
|------------|--|-----------|
| 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.....                       | 20        |
| 5.3.4      | Implications of proposals in customary law on access/ownership, tenure security and control by the poor, women and the youth.....                          | 20        |
| <b>6.</b>  | <b>Plenary Discussion.....</b>   | <b>20</b> |
| <b>7.</b>  | <b>Conclusions of Facilitation Team.....</b>   | <b>21</b> |
| <b>7.1</b> | <b>Contextual situation and issues regarding access, control and tenure security over customary land, stakeholder agreements &amp; disagreement .....</b>  | <b>21</b> |
| <b>7.2</b> | <b>Stakeholders’ perspectives on the Customary Land Act, 2016 and the extent to which it addresses current and future situations and aspirations .....</b> | <b>22</b> |
| <b>7.3</b> | <b>The desired future regarding the situation with customary land, stakeholder agreements &amp; disagreements.....</b>                                     | <b>22</b> |
| <b>7.4</b> | <b>Possible pathways for resolving the land contests and issues that stand in the way of a mutually acceptable land legislative and governance.....</b>    | <b>22</b> |
| <b>8.</b>  | <b>References .....</b>  | <b>24</b> |
| <b>9.</b>  | <b>Appendix 1: Checklist for district and community stakeholder engagement meetings.....</b>   | <b>25</b> |

## 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

In the Mpherembe area there is a wholly patrilineal system, characterised by women living at the home of their husbands and mostly cultivating land belonging to the husband's family. It is a patriarchal society and rarely do women become chiefs in this area. Children belong to their fathers' side in Mzimba's Mpherembe area.

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

Tobacco is the main cash crop grown in the Mpherembe area. It is grown either on estates owned by both individuals and companies, as well as by small-scale farmers. Maize is grown by nearly every household in the area as a staple food crop. In addition to tobacco and maize, legume crops like soybeans, common beans, and groundnuts are grown as cash crops. The Mpherembe area hosts labour tenants largely from Southern and Central region districts of Malawi.

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

The area of Traditional Authority Mpherembe in Mzimba was initially intended to be one of the pilot sites for implementation of the CLA in the Northern region of Malawi. However, while sensitisation meetings by Mzimba Lands Office and LandNet Malawi targeting chiefs, local development committee, women, and the youth were in their early stages, the chiefs in the Mpherembe area and the Mzimba Heritage Association banned LandNet and Mzimba district council from undertaking any activities related to the piloting of the CLA in Mzimba. According to the chiefs, the new Act is dethroning them of their chieftancy powers by reducing their powers over land. The chiefs did not like the committees and the composition of the committees proposed by the CLA. Among other things, the CLA gives more powers to women on land issues, contrary to prevailing long-standing cultural norms in the area.

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

The consultations took place on 3<sup>rd</sup> September, 2018 at the Headquarters of Inkosi Mpherembe. Table 1 provides details of stakeholders consulted and these included:

- Chiefs from Inkosi Mpherembe
- Women belonging to the Women Empowerment Group. This is an advocacy movement organization on land rights. It was formed by LandNet.
- The Area Development Committee. This is 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.

**Table 1 Stakeholders consulted**

| <b>Stakeholder group</b>          | <b>Detail</b>   | <b>Male</b> | <b>Female</b> |
|-----------------------------------|---|-------------|---------------|
| <b>Area Development Committee</b> | NGO, government staff, private sector, chiefs   | 10          | 9             |
| <b>Chiefs</b>                     | 4 Group Village Headmen, 6 Village Headmen  | 10          | 0             |
| <b>Women Empowerment Group</b>    | Women from the area of Inkosi Mpherembe, who have been trained in land rights and advocacy by LandNet | 0           | 10            |

#### **4.5 Method for district consultations**

The Facilitation Team used a modified outcome mapping approach (OMA) to initiate a dialogue on the CLA. The stakeholders were divided into focus groups of chiefs, women, and ADC to facilitate discussions. Each focus group was facilitated by two members of the Facilitation Team. In the groups, stakeholders reflected on the current situation of land themes – access/ownership, tenure security, and control for the poor, youth and women. The stakeholders were 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 members from other groups commented on each other’s 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 Women

#### 5.1.1 Awareness and knowledge about the CLA

The Women Empowerment Group of Inkosi Mpherembe were trained by LandNet on the New Customary Land Act. All ten women who took part in the discussions said that they were aware of the CLA and have knowledge of its substantive contents.

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

On access to land, women in Mpherembe use the land that belongs to their husbands. The women revealed that they relocate to their husband's homes after marriage. Some women buy land in trading centres but this is often for the purpose of setting up businesses at the trading centres. Women who choose to never get married or who are divorced or who are married by men from the Central or Southern regions of Malawi, such women are given land out of goodwill either by their brothers or sometimes by the traditional chiefs after making a request for such arrangements. Despite the area being patrilineal, women freely use the land that belonging to their husbands without problems and this continues even after the husband dies. In case of divorce, women go back to their homes where they are allocated land by their parents or brothers.

For men, land in Mpherembe belongs to them. Men are the ones that are solely entitled to inherit land from their parents and indeed the land they have access to is largely the land they inherit from their parents. Men also access land by buying at trading centres for business purposes. In some cases, men are shared land by chiefs. One participant said *"Here land belongs to men. The land belongs to them. When parents die, all land is shared between the male children and none goes to the female children"*.

For male youths, land is inherited from parents from the paternal side when they become 18 years old or more. Otherwise, all young people regardless of gender, cultivate land that belongs to their parents as members of their parents' family. *"These are children they are not independent from us. They provide labour in our farms"*. Some young males also get their land from chiefs while others that go to South Africa are able to buy their own land. When young men get married, they are given their own land by their parents. In

Mpherembe, young women do not have access to land of their own because they are expected to get married and cultivate land belonging to their husbands. If they cultivate land, then it is about providing labour in their parents' garden. However, when the young girl is married and eventually divorces, she is shared land by their parents or their brothers until she is married again.

In terms of tenure security, the women said that no one is being deprived of their land nor losing their land tenure security in the area of Inkosi Mpherembe because the traditional chiefs, clan elders and indeed all community members are reliable sources of security in Mpherembe. There was a consensus that, as one woman said in the FGD;

*“Group village heads, village headmen, and clan leaders provide tenure security. You need to know that when choosing a traditional chief, we do not choose strangers. Rather we choose someone who has grown up within the village, someone with adequate knowledge of the village in terms of who owns which land and the land boundaries. The clan leaders also know who owns which land within the clan and protect their subjects. The chiefs and clan leaders adequately and effectively deal with all land issues here. Land tenure security for women here is not under any threat”.*

When it comes to the issue of control over land, Mpherembe women unanimously reported that there is joint control over land in Mpherembe between women (wives) and men (husbands). The women said that men cannot make any decisions over land without consulting their wives. One woman said *“women have joint control over land here. For example, women are able to successfully force their husbands to return money to the buyer if the man sold land without her knowledge and approval. Even when deciding which crops to grow or which land to fallow, women discuss with their husbands on equal footing. It is only very rude women who do not respect their husbands that do not have a say over their husbands' land”.* In addition, the women said that even when parents are seen to be making wrong decisions, children in the household do intervene. One participant said *‘we have seen children stopping their parents from selling land in families’.*

Traditional chiefs at all levels are the custodians of land in their areas of jurisdiction. In this regard, the women of Mpherembe reported that chiefs have powers and do stop households from selling or renting out their land because they know that the land belongs

to the children as well and other future members of the family. One participant said “*land is not like tomato. Tomato is easy to sell. Land is not sold like tomato. Chiefs are involved whenever anyone wants to sell land and often chiefs here bar their subjects from selling their land*”.

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

With regard to access and ownership of the land, the women are happy with the current status quo. In this regard, the women said they want nothing to change. Rather things should stay the same because “*because you don’t fix that which is not broken*”. The women argued that, unlike in Central and Southern regions of Malawi where there is a high population and a resultant scramble for land, in Mzimba people have small family sizes and there is enough land for everyone. They also said that renting land in Mpherembe does not happen because people fear losing their land to the people that rent the land. “*There are people from other regions who feel sorry for women that our men exploit us and abuse our land rights but that’s not true. We are happy with our culture. Nothing should change*”.

With regards to tenure security, the women strongly feel that the current status quo which is based on cultural and traditional systems of land administration is the best and it should not be changed. Women feel that no one is being deprived of their land rights nor losing their land in Mpherembe area because the tradition chiefs, clan elders and indeed all community members are the reliable sources of land tenure security in Mpherembe.

In terms of control, the women indicated that traditional chiefs at all levels are the custodians of land in their areas of jurisdiction. This situation should remain. The chiefs have powers to stop households from selling or renting out their land because they know that the land belongs to the children as well and other future members of the family.

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

According to the women, the people of Mpherembe have heard that the government has enacted the CLA as a plot aimed at “*snatching land from the people of the Northern region to give it to the people from the highly populous Central and Southern regions who are*

*currently experiencing land shortage*". According to the women, government knows that most people in the Northern region will not be able to afford to pay for the land registration process and certificates. It is upon this failure to pay for land registration by the people from the North that government will take away their land and allocate to the people from the Central and Southern regions.

## **5.2 Consultations with Chiefs**

### **5.2.1 Awareness and knowledge about the CLA**

The chiefs indicated that they had heard about the CLA and they were aware about some of its contents. LandNet had been working in the area to start a pilot project to implement the Act. It is through their interaction with LandNet that they became aware of the CLA and some of its contents. The chiefs revealed that they knew that the Act has proposed that customary land should be registered and there should be joint ownership by the husband and the wife. They also knew that the Act had proposed that there should be Land Management Committees and Land Tribunals. Based on this understanding the chiefs in Mpherembe have taken the position that the Act is not good for the area and the pilot project should not be implemented in the area.

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

Starting with access and ownership of the land, the chiefs in Inkosi Mpherembe indicated that, according to the Ngoni culture, a man inherits the land from the father. A woman accesses the land through her husband. Once married, a woman leaves her parents to live in her husband's village and used the land that belongs to her husband. The chiefs were quick to say that there is a misconception that women do not have access to land, but the truth is that no woman is chased from the land she uses with her husband even when he dies. Women and their children are allowed to stay in their husband's village all their life. The youth, whether a boy or a girl, uses the land that belongs to their parents. When a boy marries he is given his own land. The other form of access to land is borrowing. Other forms such as renting and buying are not common in the area because people have larger pieces of land.

Again, according to the Ngoni culture, upon getting married, a woman leaves her home and resides in her husband's village. She uses the land that belongs to her husband. The chiefs emphasised that unlike other cultures, marriage among the Ngoni is strong such that a woman is assured of living in husband's village the whole of her life. Even after the death of the husband, a woman continues to stay because she is inherited by the brothers to her husband. In so doing she has permanent access to the land. Only on occasions when, upon death of the husband, the woman decides to marry outside the family. But such cases are rare.

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
- Other people buy the land from those that have too much.

The second issue discussed with the chiefs was land tenure security. To begin with, the chiefs revealed that the common form of tenure insecurity in the area is encroachment. In order to secure their land, people do the following:

- They use physical methods such as planting trees and vetiver grass to mark boundaries of the fields. This helps to reduce encroachment
- The chiefs and their advisors use the history of the field to evidence claims by the owners of the field
- Parents and other members of the family play a big role in making sure that no one can grab the land from any legitimate owner.

The third issue was about control over the land. It was reported that chiefs and parents (family) control over the land. The rights of people over the land can only be negotiated with the chiefs or the father. Currently, no one can sell the land because they fear family members, especially the father. In the past chiefs controlled allocation of the land but now they only play a role in settling disputes. At household level the husband dictates what to grow and what to do with the land. A woman cannot sell the land belonging to the husband. Neither can the child sell the land without the approval by the father. No one can engage in any transaction without the knowledge of the father and the chief.

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

In terms of the changes, the chiefs would like and love to see no change in the way that people access land (inheritance) until Jesus comes because doing so implies ending the Ngoni culture (Ungoni). So, according to the Ngoni culture, a man owns the land because he inherits from the father. According to the Ngoni culture (Ungoni), a woman does not have the right to own, but to use, the land. This should not change. Again, in terms of ownership, in the next 5 or 10 years, the chiefs would like and would love to see to it that the current situation should not change, thus land should remain family property.

In terms of security of the tenure, the chiefs said they that the measures for securing the land have been used for a long time. They would therefore like and love to see that they are not changed at any time. The chiefs indicated that the proposal in the CLA that land should be registered and there should be title deeds to ensure tenure security is not necessary for their area.

In terms of control, the chiefs maintain that land is the wealth of the chiefs and their people. While Mpherembe (Mzimba) has a lot of unallocated land, it should be understood that this land belongs to the children of Mpherembe or Mzimba and not strangers. Any attempt to give unallocated land to strangers is not welcomed. Anybody who suggests anything contrary to the status quo is not supported by people of Mpherembe. The chiefs would like and love to see that this situation does not change until God comes because doing any change implies ending the Ngoni culture (Ungoni).

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

The chiefs fear that if the land becomes registered it will change land from being family property to individual property. If this happens there will be more conflicts as people will find it hard to graze animals on someone's individual land. Learning from experiences along the lake, if titles are allowed, people will not have access to their own land. Again, when land becomes individual property people will start selling the land because none of the family members will stop them. If people sell land, there will be no land for the children. This will be the creation of landless people. Furthermore, titles are seen as a way to end

the Ngoni culture. One of the questions still not addressed in the CLA is how titles will deal with so many parcels of land households have. Will each plot have a title deed?

The chiefs also feel that the measures for securing the land such as the family and the chiefs have been in use for a long time. These measures might have some weaknesses, but this cannot be a good enough reason to replace them. Rather, there is need to find ways to strengthen them.

The proposal in the CLA that there should be committees to manage the land are therefore not welcomed in Mpherembe area. Also not accepted is the proposal to have Land Tribunals because chiefs are already doing their job in settling conflicts. Chiefs carry out this task with the help of advisors. It is important that this should not change because any change implies the end of the Ngoni culture (Ungoni).

### **5.3 Consultations with Area Development Committee**

#### **5.3.1 Awareness and knowledge about the CLA**

The members of the ADC indicated that they know about the CLA because LandNet had been working in the area to sensitise them about the Act. The members are also aware because they have been following developments in parliament since the time the Bill was presented. They said they know very well that when the Bill was presented some members of parliament walked out in protest because it was a bad bill. So they are aware that the CLA has not been accepted by most people in Malawi and it is a bad law, which should not be implemented.

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

With regard to access and ownership, the ADC members indicated that women do not own the land but they use the land that belongs to their husbands. This is because in this area a patrilineal system is followed, and women freely use their husband's land even when the husband dies, arguing in their culture, their marriages are very strong and rarely collapse. About 5% of women choose to stay at their parents' home and these cultivate the land given by their paternal parents. For women who want to start living and working at trading centres, they buy land at the trading centres.

Men in Mpherembe cultivate land they inherit from their paternal parents. When the paternal parents die, the men even expand their land because the land left behind by their late parents is passed on to the male children only. Sometimes, men borrow the land from family members.

For male youths, land is also inherited from their fathers but only when they are 18 and above. Otherwise, all young people regardless of gender cultivate land that belongs to their parents as members of their parents' family. "*These are children. They are not independent from us. They provide labour in our farms*". Some young males also get their land from chiefs while others that go to South Africa are able to buy their own land. When young men get married, they are given their own land by their parents. Other men that do not have enough land, they are given more land by the traditional chiefs upon making the request.

In terms of tenure security, in Mpherembe there are no cases where chiefs grab the land from anyone. This is because they respect their subjects. Even when chiefs need land for community development projects, they consult the community members, and no one is forced to provide his/her land for community development projects. In most cases the major form of tenure security are the family members and the chiefs. Every member of the family knows his parcel such that no one can encroach another person's parcel. If this happens, family members and chiefs are always available to provide evidence of ownership of the land. This is normally in the form of the history of ownership. In some cases, owners of the field plant trees to show boundaries of their parcels.

In terms of control over the land, despite the patrilineal system, both women and men have equal power and control over land because as a family they together make joint decisions on what how to use the land. Even when it comes to selling of land, a man cannot sell his land without getting the consent from the wife and some men who have tried to do that, have been forced to reverse the transaction and give the sale proceeds back to the buyer of the land. Here in Mpherembe, it is only the rude and disrespectful wives that suffer at the hands of their husbands and their in-laws. Of course chiefs have an overriding control over land in their area of jurisdiction. No one can sell land without

getting the permission from chiefs. However, common practice is that often the chiefs do not approve land sales.

### 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

ADC members indicated that they do not want to see any changes to the current situation. Thus, the way people access, own, secure tenure and control this land should not change at any point in time. According to the Ngoni culture, the grand-parents left the land to the current generation, which will leave this land to the children to come. As far as this culture is concerned, there are no problems in Mpherembe to warrant any changes.

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

Without being specific the ADC members see the provisions in the CLA as a way to end the Ngoni culture because all the proposals are against the way things are done among the Ngoni. More important is the fact that the Act is a tool for the government to take away the land from the people in the North to give to the people from the Central and Southern Regions. The proposed fees are a plot by government to snatch away land from the poor.

## 6. Plenary Discussion

During the plenary the chiefs indicated that they have concerns with the CLA, they are not happy with it and they do not want to hear about it. They, together with the Mzimba Heritage, have written to the Government about their concerns, but they have not received any communication in response. They are therefore suspicious of anyone who talks about the CLA. The chiefs revealed that was the case with the visit by the Facilitation Team. Before the meeting the chiefs consulted the TA for permission to start the meeting. The permission was important because rumours were that NLA Facilitation Team was coming from LandNet, an organisation that chiefs in Mpherembe had ordered not to appear again in the area. The permission was given upon hearing that the team was coming from Bunda College and had nothing to do with the work of LandNet. Again, the team was interested to hear and dialogue with the people in Mpherembe to capture the voices of the people in relation to customary land.

The chiefs, women and members of the ADC have heard about the CLA and they are aware of the new provisions in the law. It was clear during the meeting that chiefs, ADC members and women see the new Act as disruptive to the Ngoni culture. They do not agree with the CLA because they are happy and satisfied with the current status quo in relation to how land is being managed and administered by traditional leaders in their area. These people also see the provisions in the new law as setting out to solve non-existent problems, and hence unnecessary. They do not, therefore, accept the CLA.

There was consensus among women, the ADC members, and chiefs that current land tenure security based on traditional systems spearheaded by chiefs and clan elders is already strong and effective. Therefore, the common understanding is that the CLA is trying to “*fix what is unbroken*”. The message from the patrilineal community of Mpherembe in Mzimba is that the CLA and its associated provisions such as the committees and land registration are rejected.

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

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

The chiefs, ADC members and women in TA Mpherembe agree that the Ngoni culture plays an important role on matters of customary land. Through this culture, the land belongs to men. Parents share this land among male children and not female children. Unlike other patrilineal societies, women in TA Mpherembe have women full access to the land that belongs to their husbands without problems and this continues even when the husband dies. In case of divorce, women go back to their homes where they are allocated land by their parents or brothers.

In terms of tenure security, the main units that ensure that no one is deprived of their land rights are the tradition chiefs, clan elders. In terms of control of use of the land, there is joint control over land in Mpherembe between women (wives) and men (husbands). Of course chiefs at all levels are the custodians of land in their areas of jurisdiction.

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

The chiefs, ADC members and the women see the CLA as a plot aimed at “*snatching land from the people of the Northern region to give it to the people from the highly populous Central and Southern regions who have land shortage*”. The chiefs fear that land registration will change land from being family property to individual property. This change will bring more conflicts as people will find it hard to graze animals on someone’s private land. The change to individual property will give people the freedom to sell the land because none of the family members will stop them. This will be a recipe for landlessness in the district. Besides it will be the end of the Ngoni culture.

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

The women, chiefs and the ADC members would like to maintain the status quo, where people should access, secure and control their land according to the Ngoni culture. The women emphasise that there is nothing broken on land matters in Mzimba, therefore, there is nothing to change “*you don’t fix that which is not broken*”.

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

A number of pathways to resolve land contests and issues have been identified as follows:

- i.** The chiefs, women and ADC members see the CLA as disruptive to their culture. The only way forward to reaching a mutually acceptable framework of land legislation and governance is to have a law that respects their culture.
- ii.** The position taken by Mpherembe women from the patrilineal system defies feminist theory thinking. With women in Mpherembe staying at the husband’s place and not being entitled to land inheritance, feminist theory would have predicted the Mpherembe women to be the ones to fully embrace the CLA which enables the empowerment of women. However, the Mpherembe women are

clearly saying they are happy with the status quo on land administration which is in the hands of traditional chiefs.

## 8. References

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3. Government of Malawi, 2008. Ministry of Finance. 'Malawi Social Action Fund: Resettlement Policy Framework. RP 670.' Lilongwe: Ministry of Finance
4. Government of Malawi, Customary Land Act, No. 19 of 2016
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            |     |                 |               |        |