



Knowledge Innovation and Excellence

Community Level Land Dialogue Report

Community Stakeholders' Understanding of the Current Land Context, the Customary Land Act (2016) and their Desired Future in TA Nazombe Area in Phalombe 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

According to National Statistics (2019), Phalombe district covers an area of 1,323 km² with a population of 429,450 in 2018 (a 37% increase on the population of 315,185 in 2008) giving a population density of 325 per km² (compared to 238 per km² in 2008). The main ethnic groups are Lomwe, Yao and Nyanja. Chinyanja is the most commonly used

language. Chilomwe and Chiyao are the other dominant languages with Chichewa and English also being spoken, (Nelson, et al. 2018). The district is bordered by Mozambique to the eastern side, Zomba to the north and Mulanje to the west and south.

A proportion of the district is under cultivation and human settlement, while the rest is wetlands, that include Lake Chilwa and Mpototo Lagoon, and forest reserves, the biggest of which is the Michesi Forest Reserve on Michesi Mountain (Taulo, et al., 2008). Agriculture is the main source of livelihood in the district: 96% of households are engaged in agriculture, with an average area of land per household of 1.1 acres (NSO, 2017).

TA Nazombe in particular is mostly dominated by the Lomwe tribe. According to the Lomwe culture, a woman owns the land which she inherits from her mother or grandmother. Again, according to the Lomwe culture, upon getting married, a man leaves his home and resides in his wife's home. The man therefore uses the land belonging to his wife. With regards to the youth, a girl inherits the land from her mother while boys usually use the land belonging to their parents until the time they get married. At that point young men use the land belonging to their wives.

4.2 Major agricultural activities/projects in the area

The area of TA Nazombe predominantly depends on agriculture for livelihood and maize is the dominant crop grown (Nelson, et al. 2018). Other commonly grown crops are tobacco and legumes (beans, groundnuts, soybeans).

4.3 Activities related to implementation of the CLA in the area

Chiringa area in TA Nazombe is one of the pilot areas for the implementation of the CLA. The project is being implemented by LandNet and the Centre for Environmental Policy and Advocacy (CEPA). The project has demarcated the land of one Group Village Headman Chiringa into a Traditional Land Management Area. They have also established Land Management Committees but the process of land registration is still underway.

4.4 Description of the stakeholders consulted

The meeting took place on March 7th 2019 at the headquarters of T.A Nazombe in Chiringa area in Phalombe. The participants included women from the Coalition of Women Farmers (COWFA) group, Area Development committee members and Chiefs from T.A Nazombe area (Table 4.1 provides details of the stakeholders consulted). The

COWFA women’s’ group also comprised land committee members (a grouping formed with the facilitation of LandNet as part of the CLA pilot process). During the discussions, the participants were asked to:

- Indicate if they were aware of the Customary Land Act, 2016 and if they have knowledge about the contents of the Act.
- Discuss the current situation in the area with regards to access/ownership, tenure security and control
- Discuss their aspiration/changes they would like to see in the next five years and they would love to see in the next 10 years to come.

Table 1 Stakeholders consulted

Stakeholder group	Detail	Male	Female
Area Development Committee	NGO, government staff, private sector, chiefs	9	7
Chiefs	Group Village Headmen	9	2
Coalition of Women Farmers (COWFA)	Women who were part of a community group called COWFA and some members of the pilot land committees	0	6
Total		18	15

4.5 Method for district consultations

The Facilitation Team used a modified outcome mapping approach (OMA) to initiate a dialogue on the CLA. The stakeholders were divided into focus groups of chiefs, women, and ADC to facilitate discussions. Each focus group was facilitated by two members of the Facilitation Team. In the groups, stakeholders reflected on the current situation of land themes – access/ownership, tenure security, and control for the poor, youth and women. The stakeholders then reflected on changes they would like to see in access/ownership, tenure security, control for the poor, youth and women in the next 5 to 10 years. Finally, the groups were asked to assess the implications of the CLA’s proposals on

access/ownership, tenure security and control by the poor, women and the youth. See Appendix 1 for the checklist that was used for the focus group discussions (FGDs). After the FGDs, the groups presented their discussions in plenary, where members commented on others' presentations. Video and audio interviews were recorded as part of the process of generating evidence on how the CLA is envisaged to work on land access, land tenure security and access to land among women, men, youth and the chiefs.

5. Results of Focus Group Discussions

5.1 Consultations with Women

5.1.1 Awareness and knowledge of the CLA

The question of awareness and knowledge of the CLA was asked in a larger plenary session before participants were divided into groups to discuss specific land issues. Out of the 16 participants that were initially present, 8 of them (50%) indicated that they were aware of the Customary Land Act (2016). Furthermore, 7 out of the 16 participants (44%) knew something about the actual content of the Act. This level of knowledge and awareness can be attributed to the fact that Chiringa is one of the pilot areas for the implementation of the CLA.

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

The women indicated that there are different ways that women, men, the youth and the poor access land.

Table 2 below summarises the current ways that people access land within T.A Nazombe jurisdiction.

Table 2 Current ways that people access land within T.A Nazombe jurisdiction according to women

<i>Access to Land</i>			
<i>Women</i>	<i>Men</i>	<i>Youth</i>	<i>Poor</i>
<ul style="list-style-type: none"> • Inheritance from parents • Buying • Given by Chiefs • Renting 	<ul style="list-style-type: none"> • Marriage • Buying • Inheritance from parents in special cases • Renting 	<ul style="list-style-type: none"> • Use their parents' land • Renting if they have access to money • Buying if they have access to money 	<ul style="list-style-type: none"> • Inheritance from parents • Given by Chiefs

As the table above suggests, women access land through either inheritance from their parents, buying, given by their chiefs or renting. Men on the other hand, can access land mainly through marriage. Once married, a man ideally leaves his parents' village to live in his wife's village and uses the land that belongs to her.

The youth, whether male or female, use the land that belongs to their parents. When a girl marries, she is given her own land which she can use with her new husband. The other form of access to land by either men, women or the youth is borrowing. Other forms such as renting and buying are also used, especially by those people who have the money.

The women indicated that, according to the Lomwe culture, a woman owns the land because she is the one who inherits it from her mother. It is only in special cases where there might be relatively few women compared to men within a clan that men could also inherit land from their maternal clan. Other than that, men only own the land that they have either bought or inherited as chiefs.

The women were in consensus that, currently, they have no security of tenure for their pieces of land because there are no official documents to certify the ownership of one's land. As such, this result in land disputes from time to time either where men within the clan try to sell clan land which is mostly allocated to women, or neighbours manipulate

and encroach on physical boundaries that might be temporary in nature. Currently, land ownership is secured in the following ways:

- By physical features such as plant trees and vetiver grass to mark boundaries of the fields. This helps to reduce encroachment
- The history of the field is used to ascertain claims by the owners of the field. The chiefs and their advisors use the history to protect owners of the land
- 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.
- For those that have bought their pieces of land, their documentation also serves as tenure security for them

Apart from the above measures that women noted they have been using for a long time, they also recognised the importance of registering land as the most effective way of securing tenure over land. However, they do not agree with joint registration of land by husband and wife, because the land belongs to women and, if their husbands are part of that registration, the women may be forced to sell it at some point, hence jeopardising access to land for future generations. To quote:

“...here in Phalombe, land belongs to us women. With the introduction of government initiative on land registration, we will be guaranteed that such pieces of land belong to us so that no chiefs or male relatives would be able to take that land away from us.... But we do not agree with the issue of registering the land with husbands. For instance, my husband has a different clan name from mine, and there is no way he can inherit land from my clan - where would my own relatives get land if my husband and his relatives also starts inheriting the smaller portions of land that belongs to my clan?” (Nazombe Women FGD, 07/03/19)

The fourth land issue that was discussed was about control over the land. The women reported that men usually decide what is to be grown within a piece of land, especially for married couples and even if land is owned by the women. Thus women have ownership rights over and entitlement to land but those who control most decisions regarding land use and benefits of sales of crops that are grown on those pieces of land, are usually men. For the land that is bought as a couple, the discussions revealed that both men and

women have some level of control over it. However, in cases where a man has divorced and remarried, women usually lose out because land that is bought during the marriage is usually registered in the husband's names and might be lost to the wife on divorce. Government, chiefs and maternal uncles were reported as players with potential power over the pieces of land that women hold since they can decide to grab the land at any point in time.

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

In terms of the changes they would like to see in five years or would love to see in ten years, the women indicated the following as desirable:

- Registration of land to ensure ownership of inherited land by women, men or the youth
- Compensation by government if they grab land that belongs to individuals
- Men should also have easy access to land
- Equal access of land by both male and female youths

Looking into the next 5 or 10 years, the women expressed the view that they would like and would love to see men, women, youth and the poor able to have documentation for the pieces of land that each of the groups own. Specifically, men should be able to register the land they purchase for themselves but not be able to register the pieces of clan land that they jointly cultivate on together with their wives. To quote:

"...In 5 to 10 years from now, I would like to see that there is equal access and ownership of land by men, women, and our youth – that is both boys and girls, as opposed to the current status of land access.. Women should be able to document the land they have inherited from their parents, and men as well as male youths should be able to register the land that they are able to purchase, to ensure that all of us are happy..." (Nazombe Women FGD, 07/03/19)

The women also said that they would like to see the following changes within the next five years with regards to control over land:

- Women should be able to make decisions on land use and benefits thereof

- There is a need for equitable decision making between men and women
- Youth and the poor should be able to have the space to contribute in decision making concerning land issues
- Everyone with land entitlement should be able to register their land to avoid land grabbing from other players.

In 10 years' time, the women indicated that they would love to see the government review what is working and what is not working so that they are able to decide which aspect of the CLA management they should upscale and which they should abandon.

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 discussion recorded above and comments made during plenary session, women in Phalombe seem to be generally supportive of land registration as a provision of the CLA to ensure their tenure security. However, much as there was such a consensus, the women expressed the view that they were not that happy with what they saw as a radicle move towards joint ownership of land that they have inherited from their maternal clan. In essence, they were of the view that traditional ways of land inheritance should remain the same, with the addition of registering the inherited land by the women to ensure that they have total control over that land for their future generations.

5.2 Consultations with Chiefs in the area of TA Nazombe

The meeting took place at the headquarters of TA Nazombe in Chiringa area in Phalombe, as did the women's consultative meeting above. Before the discussions Chief Nazombe welcome the NLA facilitation team to the area. In her remarks, she said that she appreciated the meeting because it was about a very important issue that concerned her personally since she has been a victim of circumstances where her own relatives grabbed some pieces of land that belonged to her and her husband. She hoped that the meeting would address such circumstances. A total of 11 chiefs attended the discussions including Chief Nazombe herself. During the discussions, the chiefs were asked to:

- Indicate if they were aware of the Customary Land Act, 2016 and if they have knowledge about the contents of the Act.

- Discuss the current situation in the area with regards to access/ownership, tenure security and control
- Discuss their aspiration/changes they would like to see in the next five years and they would love to see in the next 10 years to come.

5.2.1 Awareness and knowledge about the CLA

All the eleven chiefs were aware of the Customary Land Act (2016) and they knew the proposals the law contains. This is because Chiringa is one of the pilot area for the implementation of the new law. The chiefs who participated in the discussions came from the Group Village Headman where the pilot project is being implemented and they had participated in meetings held by LandNet and CEPA.

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

The chiefs reported that, currently, the dominant mode of access to customary land is inheritance. Women inherit the land from their mothers. These women own this land. Men do not inherit, but use the land belonging to their wives. Only in cases where there is no daughter or when the family has too much land will a man inherit the land. Other people who have money access the land through renting. This is a mode of access growing in popularity and it is locally called sub-leasing. However, one does not own the land that has been sub-leased. Other people, but only few, buy land for farming. This land is owned by both the husband and his wife. More commonly, people buy the land around trading centres to build houses, or for business.

In terms of tenure security, the chiefs indicated that, currently, the family members, especially the parents, and the chiefs are the major sources of security. The family and chiefs rely on knowledge of the history of the field to evidence claims by the owners of the field. However, the chiefs reported that their subjects experience insecurity from the heads of their families. There are some heads of families abuse their powers and grab land from their members.

In terms of control over land, the chiefs revealed that the head of the family (*mwinimbumba*) and the lineage/family have more powers over the land than others. No one can sell the land or do anything with the land for fear of family members and the head

of the family. The role of chiefs is mostly to settle disputes. In terms of controlling what to grow on the land, the chiefs said that the husband dictates what to grow on the land regardless of the land being owned by a woman. However, the husband cannot lend out or sell the land that belongs to his wife.

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 5 to 10 years, the chiefs in TA Nazombe would like and would love to see inheritance practices continue as they are because these remain the most reliable modes of access for ensuring ownership of land for women, children and even men. Women should continue to inherit the land from their mothers as this is the most reliable way for the women to own land - most women cannot afford to buy the land because they are poor. But land should be registered so that people have full and recognised ownership in the form of a title deed. Land registration should recognise women as owners of the land.

In terms of tenure security, the chiefs indicated that in the next 5 or 10 years they would like and would love to see security in customary land enhanced through the use of title deeds. They therefore hope that it will be possible for everyone to register their parcels of land. However, the chiefs were concerned that their subjects may not be able to afford registration fees and so may be prevented from protecting their security of tenure through registration.

In terms of control over the land, the chiefs revealed that they would like and love to see the family continue to be in control of the land. This will make sure that women do not lose their land.

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 indicated that some proposals in the CLA may result in conflicts. This might be the case with the proposal that land should belong to the household – the husband, wife and children. In her experience TA Nazombe has been a victim of such situations, where children of the preceding chief grabbed the land that belonged to their father but was supposed to be passed on to the current Chief. This left her landless and without access to pristine land to even share to others who were looking for land through her position as a chief. The issue is that, according to the Lomwe culture, there is land and a

house reserved for the chieftaincy. Everyone who inherits the chieftaincy inherits the land and the house. If the chief dies, his/her family should leave the land the house to the heir. In the case of TA Nazombe, the family of the predecessor did not leave the land and the house for the heir after his death. She thanks the former President, Dr Bakili Muluzu, for building her another house. Currently she uses her personal land. In her opinion, a man should make sure that his children should have land from their mother's village. No child should own the land in his/her father's village. These are not real children of the village, "*Ndiobandwa*", meaning, they are just born there, but don't belong to their father's clan.

The proposal to establish land tribunals has not been implemented. But the chiefs are uncomfortable as their position in the tribunals is not clear. They are concerned that these tribunals will take away the responsibilities of the chiefs and the councillors. If this happens, justice will be compromised because the members of tribunals are not experienced. It takes a lot of learning and experience to preside over cases in the villages. This cannot be replaced anyhow.

5.3 Consultations with ADC members in the area of T.A. Nazombe

As indicated in table 1 above, the consultation meeting with ADC members had about 11 people in attendance of which 6 were men and 5 were women. Most of the participants looked to be above 30 years of age and only a few were in their advanced age.

Just as the other groups were approached, the meeting was guided by the following questions to facilitate the discussions:

- Indicate if they were aware of the Customary Land Act, 2016 and if they have knowledge about the contents of the Act.
- Discuss the current situation in the area with regards to access/ownership, tenure security and control
- Discuss their aspiration/changes they would like to see in the next five years and they would love to see in the next 10 years to come.

5.3.1 Awareness and knowledge of the CLA

Seven (7) out of the (11) participants (63%) of the group discussion expressed awareness of the law. When the question of exploring whether they knew the key provisions of the law was asked, only two (18%) of the participants, were able to articulate that the law will

work by registering land which was managed by clans. These two participants also indicated that the law has provisions for vesting power in land committees for governing and managing land disputes.

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

From the discussions, it was revealed that in this area people practice a matrilineal system of marriage and inheritance. Thus, emphasis is on women as custodians of land. Our discussion revealed that land is usually accessed by inheritance where a girl child accesses land from her mother. The boys usually access land through marriage. The group further narrated that a girl child is allocated land upon coming of age whilst a boy child is openly told that he can farm with his parents, but his land will be accessed where he will be married. To quote:

“...Here in Nazombe area, we practice matrilineal system of marriage and inheritance... in terms of inheritance of land, a girl child inherits her piece of land upon reaching puberty in readiness of marriage, while a boy child is encouraged to help out on farming with the parents until he gets married and moves to his wife’s village where he will access land given to his new wife...” (FGD with Nazombe ADC, 07/03/19)

The group narrated that lately people are also accessing land through informal land markets. This was usually the case among those that can afford to buy. Most buyers of land are men. Usually the men in the area go to South Africa to work and upon return they use their savings to acquire land. One member had this to say *“Anzathu amene amayenda Joni (South Africa as it is commonly called in this area) akapata khobidi amagula malo amene amakhala mudzina lawo kapena la banja...”*, meaning, *“Those who travel to South Africa usually use the money that they make there to purchase land and they register such pieces of land either in their own names or as a family” (FGD with Nazombe ADC, 07/03/19)*. Table 3 below summarises the current ways that ADC members reported that people access land within T.A Nazombe jurisdiction.

Table 3 Current ways that people access land within T.A Nazombe jurisdiction according to ADC members.

<i>Access to land</i>			
<i>Women</i>	<i>Men</i>	<i>Youth</i>	<i>Poor</i>
<ul style="list-style-type: none"> • Inheritance from parents • Buying • Given by Chiefs • Renting in 	<ul style="list-style-type: none"> • Marriage • Buying • Inheritance from parents in special cases • Renting in 	<ul style="list-style-type: none"> • Use their parents' land • Rent if they have access to money • Buying if they have access to money 	<ul style="list-style-type: none"> • Inheritance from parents • Given by Chiefs

As table 5.2 above suggests, women access the land through either inheritance from their parents, buying, given by their chiefs or renting. Men on the other hand, can access land mainly through marriage. Once married, a man ideally leaves his parents' village to live in his wife in her village and uses the land that belongs to her.

As the women reported, the ADC members said that the youth, whether a boy or a girl, use the land that belongs to their parents. Some of the youth rely on borrowing the land from relatives. Others who have enough money rent or buy land.

On the issue of land ownership, we were informed that in Phalombe, *“land is owned by women, where a girl child is given land upon getting to the age of potentially getting married,”* said one man who was part of the ADC FGD. This ownership system of land is also practiced in relation to land that a family may acquire by buying. To quote:

“...Imagine even when we buy land as men. The land is later converted to the traditional system of women inheriting land. For instance, if I purchase land for myself, my wife and my children, in the event of death of both me and my wife, the children that will have more entitlement to that purchased land will be the girls than the boys. The boys have to move somewhere, either through marriage or purchasing different pieces of land so that their sisters and their children are to be left with the inherited purchased land... In very rare cases where a family has all male children, it's when

we see land passing on from mothers to sons or from family to sons for both clan land or purchased land” (FGD with Nazombe ADC, 07/03/19).

Further to this discussion, we heard an interesting personal story about how culture and expected norms have enforced ownership of land by women. One discussant on the FGD narrated that his father was given land in his mother’s village by his parents as he was the only son in his family with three other sisters. The discussant father decided to stay in the village of his mother where he had accessed the land even after he got married and started to have children. Things were rosy at the beginning until his sisters’ daughters came of age and started to get married. Unfortunately, or fortunately for the discussant father, he had migrated to South Africa for a job search at this time. As per tradition the nieces accessed and owned land from their mothers and started to build their houses – including by enclosing their uncle’s compound and house. The discussant further narrated that he talked to his father about the need to buy land out of this village to avoid challenges and unresolved disputes with his siblings over this land should the worst (death of the father) thing happen. Fortunately, the father listened to the concerns and advised buying land for the family, but within the village where they have been residing. To sum up, the discussant said:

“...Even though the new acquired land was through purchase by my parents, such land is only accessible to me and my siblings as long as my parents are still alive and sticks around this village. Otherwise, my mother’s family can start claiming ownership of this land as long as we are still residing in my mothers’ village.” (FGD with Nazombe ADC, 07/03/19).

The cases above therefore emphasises the fact that male children only have user rights and are usually denied ownership of their parents’ land regardless of whether such pieces of land have been acquired through inheritance or purchase.

With regards to the issue of tenure security of land, participants reported that this is largely dependent on the oral historical records of the land. Family and clan members are the primary custodians of the records for the land. They are usually consulted and expected to act on in the case of a dispute arising over land tenure.

Apart from family and clan, there was consensus in the FGD that the chiefs, ranging from village headman through to senior chief, are also critical in matters of security of tenure. They are usually moved to intervene on matters of disputes over land if families and clans fail to resolve such issues. The FGD members further explained that, for land acquired through the rural land markets, security of tenure is supported by sale agreement documents. Such documentation is often signed by a witness from the family, the chiefs and the parties exchanging the land for money. The members of the FGD narrated that such paperwork has been used to resolve disputes on land rights at family level, as well as within the courts. The paperwork is used alongside the family, clan and local leadership tenure security systems.

The group did not agree whether the use of vetiver grass, trees and other landmarks were significant for assuring security of tenure or were mere demarcations of land which one owns. The discussants also mentioned that people in the area tend to believe that witchcraft is also used to ensure security of tenure for the land.

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

In terms of changes they would love and like to see in 5 to 10 years to come, the group mentioned the following as their aspirations with regards to access/ownership, tenure security, and control of land for the poor, youth, men and women:

The poor should be helped to access land through government programmes. The group felt that the rich or better off people can easily access land through different mechanisms, but how about for families that have no land and no money to buy land? Therefore, the participants proposed that government should do something for these people. Their fear was that once people who are able to access and purchase land through different means will register their land as it is being suggested in the CLA leaving the poor people without land more excluded and vulnerable than before.

Customary land should be accessed through the current cultural setup to minimise disputes which may arise from changing the system. *“Changing the way customary land is accessed is changing our culture”* narrated one discussant in the group. Though this was an opinion of many participants, others disputed it and thought that in the near future

and beyond, both sons and daughters should be allowed to access and inherit land of their parents. To quote:

“...I would not want to see my son live a slavery life in his marriage because of land. In our community we have an old man that has lived with us because he married in our village. He was a teacher and ended up working and investing in our village. He retired and settled in our village as this was where he had built his house (essentially building it for his wife and children). His wife passed on just recently and this is when the man is above 70 years of age. Young men and women had to decide on what to do with the old man since his wife, the owner of the land and house had passed on. Fortunately, they decided to keep him due to his good conduct until his last breath....”
(FGD with Nazombe ADC, 07/03/19).

Narratives like the one above from one of the participants of FGD with ADC members were not uncommon, especially highlighting the injustices which men are subjected to due to the current system of accessing land. However, there was an overwhelming consensus amongst male and female FGD participants for continuation of the old inheritance system, where most men access land through the matrilineal system.

With regards to what they aspired to see in land ownership in 5 to 10 years to come, the participants expressed the view that the buying and selling land should be formalised. *“We hear that in some instances, customary land is not permissible for sale and where such sales have happened the paperwork is in dispute by the courts”* narrated one of the FGD participant. Asked why they want land markets to be formalised, one participant made a remark which was largely echoed by other youthful participants, that the suggestion seemed to promote the interest of ensuring quick and smooth sales of land. In their own perspective the thought of a quick sale of land would help them secure capital for their dreamt business ventures. For instance:

“Boys should also be permitted to own land from their mother’s inheritance line. We would love to see gender equality prevailing even on the boy child who now is a slavery of marriage. Most men’s loyalty to marriage is loyalty to land in this area”
(ADC participant from the FGD with Nazombe ADC, 07/03/19).

6. Plenary Discussion

The participants in the dialogue meeting expressed knowledge of the CLA and they hoped that the Act would guarantee full ownership of customary land by the members. Women hoped the Act would guarantee more security as the heads of lineage would not grab the land after it has been leased in their names.

But the chiefs expressed concern that that some proposals in the CLA may result in conflicts. This might be the case with the proposal that land should belong to the household – the husband, wife and children. In her experience TA Nazombe has been a victim of such situations, where children cling to the land of their fathers. This is in contradiction to the Lomwe culture, where land is expected to be inherited through the matriline.

With regards to the proposal to establish land tribunals (not yet in place), the chiefs were generally against this because of the lack of clear roles for chiefs in such tribunals. To quote:

“Chiefs are not comfortable that their position in the tribunals is not clear. They are concerned that these tribunals will take away the responsibilities of the chiefs and the councillors. If this happens, justice will be compromised because the experienced members in community conflict resolution will not be included. It takes a lot of learning and experience to preside over cases in the villages...” (T.A. Nazombe, plenary discussion, 07/03/19).

In terms of voices of the ADC, it was clear that they had a different perspective from that of the chiefs and the older participants. They want the youth to inherit land before they get married, they should be able to register such pieces of acquired land and be able to dispose of it or use it as collateral to loans or quick money whenever need be. Such voices were quickly silenced by the majority of the participants (older men and women), as land for future generations needs to be protected by the traditional land inheritance systems, If caution is not deployed, all land in the Nazombe area might be found in the hands of the rich or foreigners leaving the poor, women, men and the youth landless.

In cases where they were agreeable that men or male youth should also own and have titles for their land, the women as well as men agreed that this should apply to land that is purchased and not on clan land. To quote:

“...For male youth, they still need to access land through marriage, and this should continue to ensure that there is still enough land to share through the clan. However, for male Chiefs that have settled in their matrimonial villages, they need to secure other pieces of land for their wives and children, either by purchasing it somewhere, because he has to consider that his female clan members would have limited access to land if both his wife and children are also entitled to land in his matrimonial village.”
(Male participant, Phalombe Plenary Session, 07/03/19).

But the ADC members were of the view that it is important that people should have their land registered in order to enforce their security of tenure. However, the role of Chiefs and clans in securing land should be maintained. In other words, the clan land should be maintained as this has helped individuals not to dispose of land without common agreement.

When it was put to them that land registration would mean the chiefs no longer playing a meaningful role on security of tenure - as the matter becomes an issue between the land owner and the state- the participants said that they would be concerned because the associated process for resolving the disputes on land will be expensive and difficult for a local man or woman to undertake.

7. Conclusions of Facilitation Team

In conclusion, a lesson learnt from the discussion is that the CLA needs to take into consideration traditional specificities of land inheritance that can ease or oppose its implementation. The differing views with regards to land access, ownership and tenure security expressed by the participants consulted, reflect the intrinsic conflicts of interest between men and women, boys and girls on land within the matrilineal system. Despite the different views, there is overwhelming support of not abandoning traditional systems on issues of land and this needs not to be ignored by land legislation.

For instance, with regards to the contextual situation regarding land access, control and tenure security, it was observed that there are strong agreements among the chiefs, ADC members and the women on issues regarding access, control and tenure security over customary land. They all agree that the current status quo is good and should be maintained with the addition of registration of land for security of tenure purposes.

Therefore, the desired future for the chiefs, ADC members and the women community stakeholders of Nazombe area, Phalombe, is one of no change to arrangements regarding access, control and tenure security over customary land. However, dissenting youthful and male voices show that there might be some demand for the aspects of the CLA that promote inclusivity, though this has to be done within culturally acceptable frameworks that should also ensure land availability for the future generations.

Thus, as a possible pathway towards resolving land issues in Nazombe area, a clause in the CLA that can be applied would be Section 22 — (2c:i-ii) which specifies that in determining whether or not to grant a customary estate, a land committee shall—have regard to equality of all persons, such as—

- i. treat an application from a woman, or a group of women, a person with a disability, or a group of persons with disability, no less favourably than an equivalent application from a man, a group of men or a mixed group of men and women; and
- ii. adopt or apply no adverse discriminatory practices or attitudes towards any person who has applied for a customary estate;

Thus, even though the clause above would be relevant to ensure that men and male youths have equal access to land with women and female youths, the clause still needs to be further contextualised to accommodate the complexities that the land consultations in Phalombe matrilineal community have. It should be recognised that these might be different from other (patrilineal) contexts in Malawi.

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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				