

**ARTICLE**

# **Will Formalisation of Customary Land into Customary Estates Foster Agricultural Commercialisation in Rural Areas of Malawi? A qualitative Analysis Approach**

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**ABSTRACT**

Following colonialism, the majority of African nations launched land reform programmes that principally focused on the redistribution, titling, and registration of rural land to address residual effects of colonial land policy. The current land reform programme in Malawi has mainly targeted formalising customary land into customary estates in order to guarantee tenure security, boost credit availability and hence facilitate investments. While there are numerous advantages to formalising customary land, little is known regarding the impacts of formalising customary land into customary estates on agricultural commercialisation in rural areas of Malawi. This paper examines the effects of formalising customary land into customary estates to promote agricultural commercialisation in rural areas of Malawi. Semi-structured in-depth key informants' interviews and focus group discussions were conducted to collect data from Rumphi, Kasungu and Phalombe districts. Document analysis was used for triangulation. Data were analysed using thematic analysis. The results show that formalising customary land into customary estates involves various steps, such as adjudication and demarcation of land parcels. Results also indicate that Customary Land Committees (CLCs) assist in affirming ownership, explain and confirm boundaries. Finally, formalisation leads to issuance of title that is used as collateral to access credit, which is important for the establishment and growth of agro-based industries. This, in turn, enhances investment opportunities and promotes agricultural commercialisation in the rural areas. Therefore, it is recommended that formalisation of customary land should feature highly on government land reform agenda and be part of land policy in order to foster agricultural commercialisation.

**Keywords:** Formalisation; Customary Estate; Agricultural Commercialisation; Land Reform; Agro-based Industries; Producer Organisation

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# 1. Introduction

After colonialism, the majority of African states implemented land reform initiatives centred on the redistribution, titling, and registration of rural land held predominantly through customary tenure. The necessity to handle the nation's rapidly growing population, land disputes, landlessness, and rising rates of poverty has propelled the process. Customary tenure practices vary significantly across Sub-Saharan Africa. Customary lands in Sub-Saharan Africa can be administered by traditional chiefs or by large families or clans, as is frequent in areas of West Africa <sup>[1]</sup>. Unlike statutory tenure, which was instituted during the colonial era, customary tenure is owned and managed by indigenous tribes in line with their customs <sup>[2,3]</sup>. The tribe, group, community, or family owns the property under this system of tenure. Customary authority, such as chiefs, distribute land within their jurisdiction. Individual and collective rights to use local land resources are included in customary land rights, which are site-specific, flexible, and often overlapping <sup>[4,5]</sup>.

Different ethnic groups and villages in the state have different land ownership systems, and these ethnic groups and villages may adhere to community, clan, or kinship, private, or individual property ownership systems <sup>[1,4]</sup>. Local chiefs control dispute resolution methods, and access to land is often restricted by kinship or ethnicity, excluding outsiders and regulating land purchases. Individuals in the group may be given land for personal (family) use, but if they do not use it, it may be returned to the community. In developing countries such as Malawi, this is the most common type of tenure. Customary land use rights are typically acquired through 'son of the soil' rights. However, both migrants and 'sons of the soil' frequently pay for such 'birth rights' <sup>[6]</sup>. Even if such land is still collectively owned, individuals can claim rights of use of a specific piece of land through long-term occupation, and in many jurisdictions this right of use is transferrable to other family members and to those who can pay like in some parts of Sub-Saharan Africa <sup>[7-9]</sup>.

In developed nations, possessing something valuable such as houses, electronic devices among others without proof is almost unthinkable unlike most de-

veloping nations. In Malawi the most common method of formalising customary land rights into individual land rights that has been used is that of leases where an individual or organisation acquires land through chiefs (clan heads) then processes using the government set procedure. This formalisation is done on an individual basis and usually costly as the interested party incur all the costs. It was only from 1968 that Malawi implemented as a pilot project, a pro-poor formalisation of customary land rights that targeted family heads through systematic adjudication, demarcation and registration of land parcels in the western part of Lilongwe district in the Central region. The result of this initiative is that it led to improved agricultural productivity, secure tenure and formation of agro-based industries <sup>[9]</sup>. A similar programme commenced in 2018 where the Government of Malawi seeks to formalise customary tenure country wide into privately owned customary estates aiming at improving tenure security, spur agricultural productivity and foster agricultural commercialisation <sup>[10]</sup>. Together with the land owner and democratically elected committees, land is being adjudicated, demarcated, registered and customary estate certificates issued. While numerous published literatures have linked formalisation of customary land rights to agricultural commercialisation <sup>[11,12]</sup>, much less is known about the formalisation of customary land rights into customary estates on agricultural commercialisation in rural areas of Malawi. Specifically, the study interrogated the role of customary land committees on formalisation of customary land as provided in the National Land Policy and Customary Land Act; the impact of formalisation on tenure security, access to credit and establishment and growth of agro-based industries. The findings of this study will help to devise policies to improve land reform programmes in order to meet Sustainable Development Goals 8, 9, and 10, as well as the Malawi Agenda 2063, which places a high emphasis on agricultural productivity, which can be achieved through secure tenure, better land governance, and competitive markets.

## 1.1. Land Reform

There is a wealth of literature on land reform

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from many scholars across the world. Land reform has always piqued people's interest because it is a highly sensitive, politicised issue with polarised internal and foreign media coverage <sup>[13]</sup>. For example, in South Africa and Zimbabwe, land reform, specifically land redistribution, has been used as a strategy to gain a political foothold in rural areas <sup>[14]</sup>. Furthermore, De Villiers and Cousins <sup>[14,15]</sup> discovered that land reform has been one of the many difficult domestic policy concerns confronting the governments of Namibia, Zimbabwe, South Africa, and Australia. According to Sharma and Chikaya-Banda <sup>[16,17]</sup>, most land reform programmes in developing countries worldwide have been influenced by international institutions, and even where land reforms have been pushed by indigenous groups (Brazil, Zimbabwe, Ghana, Mozambique, and the Philippines), the content of the reform programmes has been shaped by the principles advocated by the international institutions.

The majority of land reform programmes in many nations have been state-led. In Tanzania, the government established a Commission of Inquiry to provide a report on land issues confronting Tanzania (and other nations in the region). The Commission openly chronicled the developments that occurred during and after the villagisation programme and attentively addressed the concerns surrounding customary rights in rural land, resulting in land titling and certification programmes <sup>[18]</sup>. Land reform programmes with similar benefits are being undertaken in Malawi, Mozambique, Namibia, Tanzania, Uganda, Ghana, and Zambia <sup>[11]</sup>.

Since more than 90% of Malawi's land is subject to a customary regime, land ownership is significantly skewed, as it is in many other developing nations <sup>[19]</sup>. Usufruct rights under the customary system may be quite solid, but they are not registered and are not recognised by statute law <sup>[19]</sup>. Given that over 80% of Malawi's population lives in rural areas and relies mostly on agro-based livelihoods, this presents problems for agricultural and rural development <sup>[6,19]</sup>. In response, the Malawian government addressed the legacy of colonial land policy by implementing a number of land reforms in the land sector. The main goal of Malawi's colonial land policy was to give the British monarchy ownership

of the land and allow the settlers to access it via private title. Additionally, the administration strictly reinterpreted native rights as "occupation rights" in an effort to deter the creation of land rights comparable to freehold or the concessions that the settlers had claimed.

After independence in 1964, the residual effects of colonial land policies continued despite enacting the Land Act and Registered Land Act in 1965; this time the focus on the acquisition of land favoured more wealthy, connected and powerful politicians at the expense of the majority of poor natives. When the country adopted multiparty democracy in 1993, the majority campaigned on the need to carry out land reform programmes in order to address various problems such as insecure tenure and encroachment in protected reserves. Consequently, the Presidential Commission of Inquiry on land policy reform was established in 1996 with the task of examining how public land, customary land, and estate land are used throughout the nation <sup>[2,20]</sup>. In its final report in 1999, the Commission of Inquiry called for the creation of a national framework for the management and administration of land. As a result, the 2002 National Land Policy <sup>[10]</sup> was drafted and approved. Many recommendations were made as an outcome of the policy to enhance tenure security, equitable access to land, and effective land use <sup>[17]</sup>. Several administrative, institutional, and legislative reforms have been implemented as a result of the policy, including the review and passage of land-related laws.

## 1.2. Customary Land Law

According to Lubanski and Mai <sup>[21]</sup>, customary land rules differ between countries, within countries, and even among the same ethnic group residing in the same territory of a region. Customary land law is statutory in certain nations, granting authority to state institutions to enforce it, whilst it is left to local land governance institutions to implement in others. It is widely agreed that where customary land law is statutory, it is critical to build on existing structures, procedures, and regulations rather than "re-inventing the wheel," and that the law must be flexible enough to accommodate a wide range of customary practices while remaining fixed enough to prevent abuse by powerful actors or in-

vestors<sup>[21]</sup>. Malawi enacted a new Customary Land Act 2016<sup>[22]</sup> intending to formalise customary land rights, among other things, by defining a category of private land known as customary estate. Deininger et al.<sup>[23]</sup> contend that the new Customary Land Act seeks to designate territories controlled by individual traditional leaders and to develop participative and gender-balanced institutions that may aid in improving enforcement as a prerequisite for documenting people's rights.

### 1.3. Theories of Formalising Customary Land Rights

Many theories have been proposed throughout the world to encourage the formalisation of customary land rights. To begin, replacement theorists consider current customary land as a barrier to property market growth and economic modernisation, and propose replacing it with a purportedly better-suited type of land, namely private land<sup>[24]</sup>. The conservative basis for replacement theory<sup>[24]</sup>, is that individual tenure is unstable as a result of the concentration of customary tenure structures on group rights; customary land rights are absolute, which discourages investment and hence impedes growth, and common property connected with customary systems is obsolete and will be phased out as tenure changes toward individualisation.

Second, Hernando De Soto's Mystery of Capital idea is also brought up for discussion. De Soto<sup>[25]</sup> asserted that the majority of people in developing countries lack formal titles rather than actual capital, which he referred to as "dead capital." De Soto attributed the sluggish and expensive formalisation process that ultimately causes people to remain outside the domain of formal and legal property rights to governments, bureaucratic actors, and even conveyancers<sup>[26]</sup>. According to De Soto's argument, the poor can obtain capital from financial institutions that only accept formal titles by formalising such "dead assets"<sup>[27]</sup>. So, property rights must be codified to release this financial value<sup>[26]</sup>. In his home nation of Peru, nearly 300,000 units of peri-urban land around the capital Lima were named and registered between 1990 and 1995<sup>[26]</sup>. Many saw this as a sign of success because formalisation led to production of wealth through capital gains, the construction of an

efficient land market, and the establishment of an accessible system of land records containing permanent records of land.

### 1.4. Debates on Merits and Demerits of Formalising Customary Land Rights

Formalisation has historically been used in many developing countries to claim property rights, manage and access colonial resources, and discipline populations<sup>[26]</sup>. Private land is the most secure sort of property, which may boost credit availability through collateralisation and hence facilitate land investments. Many international financial institutions, like the World Bank, require clear and enforceable land rights as a precondition for loans, grants, or investments in these nations<sup>[26]</sup>. The majority of the literature suggests that formalising customary land rights can be beneficial in several ways, including lowering the risk of expropriation<sup>[28]</sup>, making it easier to identify owners or boundaries<sup>[23]</sup>, promoting land investments, and allowing transactions with unrelated third parties<sup>[29]</sup>. While formalisation is not a guarantee of tenure security and can present obstacles (e.g., property taxes), the benefits increasingly outweigh the costs for many communities facing growing threats to their customary land<sup>[30]</sup>.

Researchers disagree, however, and claim that formalising customary land does not ensure the security of tenure. According to Silungwe<sup>[31]</sup>, the potential of utilising a customary estate certificate as collateral to access credit could result in the loss of land, which would obliterate the security of tenure. Additionally, Deininger<sup>[32]</sup> argues that titling and registration programmes either have no discernible association with improved tenure security, credit availability, or productivity, or they have a detrimental effect on these factors. In fact, data in some nations' literature suggests that African formalisation projects have made land grabbing by elites or foreign direct investments more appealing. In South Africa, Legal documents argue that formalisation is bringing variants of customary land tenure resulting from colonial and apartheid policies, eroding rather than guaranteeing land rights<sup>[15]</sup>. When challenged to provide examples of prior triumphs, supporters of customary land rights formalisation in Africa struggle.

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The general failure of previous attempts suggests that formalisation alone is insufficient to relieve poverty<sup>[33]</sup>. While having documented rights is a common practice in affluent nations<sup>[11]</sup>, formalisation is still a difficult undertaking in most developing nations, especially in rural areas. The majority of the research on customary land formalisation supports the idea that formalising customary land rights might increase investment incentives and facilitate cross-regional trade of value chain products through operating land markets<sup>[12,23]</sup>.

### 1.5. Land Governance at the Local Level

Individuals' access to and use of land for various socioeconomic activities in Africa is largely based on customary law, which is enforced by traditional leaders<sup>[23]</sup>. This is also true in West and Sub-Saharan Africa, where traditional chiefs retain rule over the majority of customary lands. However, in such systems, a person's land rights are defined by their social standing, the strength of their existing social ties, and their connections to local authorities. Making worthwhile investments in customary land, particularly for the vulnerable, is difficult because of this. Many of the local-level land governance institutions established to manage customary tenure are hybrids, combining parts of traditional authority with some of the principles of the statutory institutions with which they interact, as in Ghana, Rwanda, and Malawi. Local institutions, on average, have a greater grasp of local needs, easier access to information, and can be held more easily accountable to local citizens<sup>[3]</sup>. Ethiopia and Tanzania shattered the grip of traditional rulers on customary land and replaced them with democratically elected institutions. The concept of village land administration was developed by electing village land councils to make allocation and other decisions on village lands and reporting their dispositions to the village assembly<sup>[18]</sup>.

In Malawi, clan rulers (village headmen) have been granting customary land to their subjects since independence. Somehow as a departure from the previous practice, the National Land Policy (2002) provided for the establishment of democratically elected land governance entities known as Customary Land Committees (CLCs) at each gazetted group village head to carry

out land administration and management activities<sup>[2]</sup>. Following this, the Customary Land Act 2016 was passed, which governs the membership, tenure, and duties of the committees. According to popular belief, democratically elected institutions promote transparency and efficiency in land administration and management; however, experience has shown that these institutions frequently clash with traditional values, making implementation challenging<sup>[5]</sup>. In summary, literature has shown that various countries implemented land reforms that culminated into new policies and laws that have established land governance institutions which are at the centre of formalising customary land rights. However, there are debates on the resultant effects of formalising customary land in different countries, with some having direct link to credit access to foster investment in various sectors while others with no any tangible link.

## 2. Data and Method

### 2.1. Research Approach, Data Collection, and Sampling Technique

A qualitative design method was used in this study. Key informant semi-structured in-depth interviews were conducted to get primary data from the population. Interviews were used to gather subjective experience, opinions, and motivation rather than facts and behaviors<sup>[34]</sup>. A non-probability purposive sampling technique was adopted to select fifteen (15) key informants who had a thorough knowledge of the phenomenon under study. The key informants provided much needed information basing on their knowledge and experience on the specific subject relevant to their expertise. These participants included lands officers, District Commissioners, CLC members, representatives from financial institutions, traditional leaders, a representative from Ministry of Trade and Industry, a representative from Malawi Investment and Trade Centre (MITC), beneficiaries of the Agricultural Commercialization Project (AgCOM), specialists from the Land Reforms Implementation Unit (LRIU) and specialists from the AgCOM.

To obtain additional primary data, eight (8)



focus group discussions were conducted to investigate people's knowledge and experiences. Two focus group discussions were held in each of the following group village areas: group village area Chimalabanthu, Traditional Authority Mwankhunikira in Rumphi District; group village area Chidiwo, Traditional Authority Kachulu in Rumphi District; group village area Ching'amba, Traditional Authority Lukwa in Kasungu District and group village area Maoni, Traditional Authority Nazombe in Phalombe District. Each focus group was composed of eight (8) people: four (4) men and four (4) women. Each focus group discussion lasted sixty (60) minutes. Data was gathered from focus group discussions by note-taking using a checklist that had open-ended questions to gather detailed responses and discussion among participants.

The questions ranged from the composition of the CLCs to their functions in adjudication, demarcation, registration, and dispute resolution; the process of adjudication, demarcation, and registration of customary estates; and the importance of formalising customary land on tenure security, credit access, and the formation and growth of agro-based industries.

Document analysis was used for triangulation in order to enhance credibility of the results<sup>[35]</sup>. The documents included published and non-published newsletters, project documents, policy documents, land registers, mortgages, charges and laws of Malawi. The data was collected in the months of June- November, 2023.

## 2.2. Study Areas

### 2.2.1. Chimalabanthu Group Village Area

This place is in the central part of the Rumphi district in Malawi's Northern Region (refer to **Figure 1**). The leading tribe is Tumbuka, and the majority of marriages are patrilineal. This location was chosen because it was one of three pilot sites in the Northern Region where the new Customary Land Act was effectively implemented to formalise customary land rights. Because the majority of the inhabitants in the area rely on agriculture for a living, land tenure security is critical to their survival.

### 2.2.2. Ching'amba Group Village Area

This place is located in Kasungu District of Malawi's Central Region (refer to **Figure 1**). Chewa is the dominate tribe, and matrilineal marriages dominate. This place was chosen because it was one of the pilot sites where the new Customary Land Act was effectively applied to formalise customary land rights. Because agriculture is the primary source of income for the majority of the people in the area, land tenure security is crucial to their survival.

### 2.2.3. Maoni Group Village Area

This place is in the southwestern part of the Phalombe district in Malawi's Southern Region (refer to **Figure 1**). The leading tribe is the Lomwe, and the majority of marriages are matrilineal. This location was chosen because it has a high population-to-land ratio and a preponderance of small-holder farmers. Formalising customary land rights in the area is therefore critical to reducing the possibility of eviction, ensuring optimal land use, and ensuring high productivity.

### 2.2.4. Chidiwo Group Village Area

This place is in the northern part of the Rumphi district in Malawi's Northern Region (refer to **Figure 1**). The leading tribe is Tumbuka, and the majority of marriages are patrilineal. The location was chosen because it is home to Phoka Coffee Growers Cooperative (PCGC), one of the cooperatives that are receiving matching grants from AgCOM with customary land formalisation efforts.

## 2.3. Theoretical Framework

The study used the Replacement theory to explain the expected link between customary land rights formalisation, tenure security, loan access, and commercialisation. Replacement theorists see unregistered customary land as a barrier to development and suggest replacing it with a new tenure that provides secure tenure, access to credit, and the establishment of land markets.

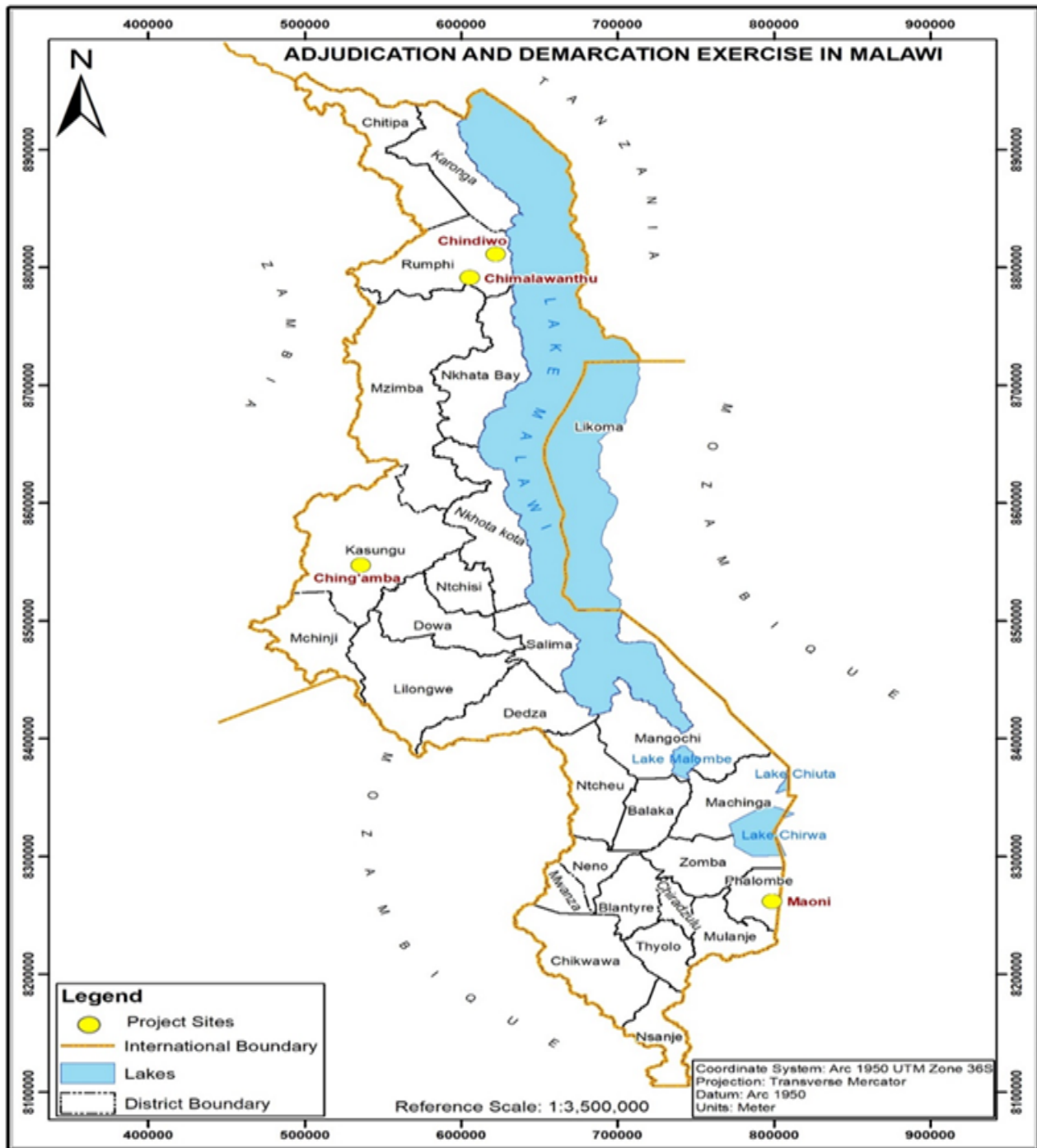


Figure 1. Map of Malawi Showing Study Areas.

## 2.4. Data Analysis

Transcription was used to prepare data for analysis. Data were analysed using thematic analysis. Finding, coding, and analysing themes or patterns in the data were all part of the process. Common topics, ideas, and patterns of meaning that came up repeatedly from

the data were identified. According to Nowell et al. <sup>[36]</sup>, a theme is a significant and cogent notion that encapsulates something crucial or pertinent about your study issue or topic. Belotto <sup>[34]</sup> defines thematic analysis as a versatile and adaptable technique that may be employed with a wide range of theoretical frameworks and data sources. As a result, thematic analysis has evolved

into a versatile and methodical process for discovering, categorizing, and presenting themes or patterns in data.

## 2.5. Ethical Consideration

An informed consent was obtained orally before the interviews could be conducted. The aim and details of the research were explained to the participants so that they are fully aware of the implications.

## 3. Results

This section presents findings from the analysed data. The findings emanate from the role of CLCs in the process of formalising customary land; the impacts of customary land formalisation on tenure security, access

to credit and establishment and growth of agro-based industries.

### 3.1. Role of CLCs in the Formalisation Process

According to the findings, the CLC's primary purpose is to formalise customary land allocations, administer, and manage land. The CLC consists of the Group Village Headman as Chairperson, six other members elected by and from within the community, at least three of whom must be women, and a land clerk designated by the Ministry of Local Government to serve as the committee's secretary.

Analysed data further show that the process of formalising customary land rights to customary estates entails the following steps as illustrated in **Table 1**.

**Table 1.** Steps in Formalising Customary Land into Customary Estates.

NO	Step	Description
1	Deployment of the Land Clerk	The Ministry of Local Government employs and deploys a Land Clerk.
2	Sensitisation and public awareness	Sensitisation meetings are conducted in two ways. The first sensitisation targets the District Executive Committees (DEC) where the Traditional Authorities are in attendance. This helps to ensure acceptance and ownership of the formalisation process. The second sensitisation meetings and public awareness are conducted to the community on the relevant land laws, the role of the land clerk, the process of nomination and election of the CLCs, the adjudication and demarcation exercise up to registration and issuance of Certificates of customary estate.
3	Compilation of names of registered voters from local registries by the Land Clerk	A land clerk collects names from villages heads on the registered members on the village roll specifically those above 18 years as the customary land act requires that those to vote and to be voted must be 18 years and above.
4	The land clerk solicits candidates from the community	A land clerk solicits names of nominated individuals after expiry of the notice for nomination.
5	Voting is conducted	A secret and open ballot is done to elect members of the CLCs.
6	Training of the Land Clerk, CLCs and field staff	The elected CLCs, land clerk and field staff to support formalisation are trained on social-cultural aspect of the community, the land laws, principles of governance e.t.c.
7	Adjudication and demarcation of land parcels	Land parcels are adjudicated and demarcated using a digital application known as Malawi Customary Land Mapping Tool (MCLPT).
8	Data are processed	The field data from adjudication and demarcation is downloaded and cleaned to remove duplicate entries and shape overlaps.
9	Public displays	Public displays are held in public places such as schools for 60 days to enable owners confirm the boundaries and structure data.
10	Corrections and objections	Corrections and objections are resolved by the CLCs and data processors.
11	Data importation	Data is imported into the Land Information Management System (LIMS) for registration.
12	Registration of Customary estates	Customary estates are registered and a Certificate of customary estate is issued using LIMS.



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The analysis also indicate that a variety of roles are played by CLCs in the formalisation of customary land rights to customary estates (**Appendix A** shows number of parcels adjudicated and demarcated with CLC's involvement). First, CLCs affirm ownership, explain and confirm boundaries, and resolve conflicts. This was revealed by one of the members of the CLC from Maoni group village area, who stated, "we know who owns which land parcel and their boundaries because we have the history of this area and we can intervene in case there are disputes about the boundaries." This could have been difficult for government authorities if we had not been a part of the process. Even the chiefs themselves could not have done this on their own." A member of the field staff corroborated the sentiments when she said that without the committee's help, it could have been difficult to fairly arbitrate and demarcate every piece of land in the area. Second, CLCs assist in resolving disputes and validating any amendments or changes that occur. Those who took part in the adjudication and demarcation or those who were not present during adjudication and demarcation could both raise objections. These included inaccurate mapping and documentation of parcel ownership as well as inadequate data collection, whereas modifications came about as a result of inaccurate data gathering and fresh requests following family talks.

### 3.2. Formalisation and Tenure Security

It has been found from the analysed data that stable tenure helps to defend people's land rights by providing them with documentary proof that they own land. According to one of the chiefs interviewed, it is simpler to resolve issues when one of the parties has documentation to the land. Over the years, I have had difficulty gathering information about the contested land because most material is hearsay, the chief stated. This was confirmed by a Lands officer, who stated that his office continues to receive complaints from chiefs when they meet in various forums, complaining that they are having difficulty adjudicating land disputes due to "inadequate and unreliable" evidence provided by the disputed parties. "Now that I have the certificate, I can say with confidence that I own and can defend my

land," stated one of the beneficiaries of a customary estate from Chimalabanthu group village area.

Analysed data reveal that many people in the four research sites have been occupying land without proper documentation. This has resulted in several confrontations over land, both in terms of boundaries and ownership. Even the chiefs' boundaries have been challenged throughout time. According to one of the District Commissioners, "the changing climatic pattern has erased many features that our parents used as boundaries, and some of the people who knew the boundaries have died. This has made resolving land disputes extremely complex." Data analysed from focus group discussions also disclose that the majority are simply exploiting land inherited from their parents with no documentation. This puts individuals in a difficult position when it comes to asserting their rights when problems develop.

Data analysis also reveal that many unresolved problems were submitted to traditional leaders during the adjudication and demarcation of land parcels, most of which stemmed from differences over boundaries. In the absence of a cadastre, chiefs rely on oral testimony and personal opinions, which are frequently untrustworthy. As a result, an adjudication map with many gaps in unclaimed land parcels is created. "Even though one of the criteria to elect us was that we should have history and knowledge of the area to help resolve the disputes, we experience challenges due to lack of documentation," said one of the members of CLC from Ching'amba group village area.

Data reveal that the use of papers to confirm title is primarily applicable to non-fraudulently obtained titles that can be easily contested in any land tribunal or court of law. Regarding the factors that lead to land disputes in the research area, the findings indicate that landlessness, unclear boundaries, tribal conflicts, and rising land demand for settlement and livelihood are all contributing to the land disputes.

### 3.3. Formalisation Leading to Access to Credit Facilities from Financial Institutions

Results show that converting customary land rights into registered private land rights is a require-

ment for obtaining credit from financial institutions. The demand for collateral in the form of registered title or deed is a necessity for the issuance of a loan, according to one of the financial institutions' personnel interviewed. Officials claim that doing these aids financial institutions in reducing the danger of default since in cases of default, they are forced to seize and sell the property to recover their funds. The officials went on to warn that without title or deed, there is very little credit that can be granted that can typically have a significant impact on investment. The response from financial institution officials was corroborated by lands officials in charge of land registration, who acknowledged that many financial institutions require a certificate and lease document as proof that the person seeking credit has officially registered the title or deed.

When questioned about whether they have begun receiving loan applications from people with customary estate certificates, the authorities from lands and financial institutions were elusive. The lands official said, "Since this is the new title that is being granted, perhaps in the future, we will receive applications. We will also watch to see how the financial institutions respond to it, as the transfer of customary estate by power of sale is prohibited by the Customary Land Act". On the other hand, one of the officials from the financial institution said, "possibly since we have not had applications from customary estate holders, there is currently no guidance on how to process such applications. When that time comes, we will see how those applications will be handled, but a registered title or deed is what matters most to us". However, despite the findings that a title or deed is a requirement for credit access, document analysis from all three land and deed registries show that only a small percentage of the numerous registered title or deed holders have used their registered properties as collateral to acquire credit.

### **3.4. Formalisation Leading to Establishment and Expansion of Agro-based Industries**

The introduction and development of agro-based sectors, such as textile, sugar, tea, coffee, and vegetable oil, which provide value chain products required on the market, are influenced by the formalisation of custom-

ary land rights that encourages businesses to obtain credit and invest in the land. The majority of investors require paperwork for the land to make investments, and it is difficult to provide credit without these documents, according to Ministry of Trade and Industry officials. An official from MITC, a government body promoting and supporting foreign and domestic direct investment, made similar sentiments. "The first thing that comes to the mind of an investor when you say land is available is the demand for legal documents to land before they can commit their investment," the official said. Typically, the desire is for legally recognized and protected legal documents, not "chiefs." If the land is not registered, the investor will demand that it be registered first, either at the expense of the government or the investor, whichever is agreed upon. This stifles progress since land acquisition is time-consuming, bureaucratic, and expensive, the official from MITC concluded.

According to the data analysed, producer organisations (PO) such as cooperatives are established and flourish as a result of formalising customary land. The findings show that title to land provides access to loans or grants that can aid in the formation and expansion of producer organisations with socio-economic advantages for both the country and specific households. According to a representative from AgCOM, which is a World Bank-funded initiative that offers matching grants to producer organisations, the producer organisations are crucial for enhancing regional trade since they produce value chain products required on the global market. The official further stated, "to make the investment sustainable, the project also supports the producer organisations in registering their lands as customary estates. Additionally, we have contributed financially to the improvement of feeder roads to facilitate the transit of the goods to domestic and foreign markets". A representative from the LRIU backed up the AgCOM official by adding that in some areas where PO such as the PCGC are receiving matching grants, the process of formalising customary land rights has been done. According to PCGC'S member, the PCGC have great expectations that the customary estate certificates will enable them to obtain credit from financial institutions

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to grow their business. The 2022 AgCOM newsletter's document analysis reveals that the project is assisting PO with customary estate registration through systematic and sporadic adjudication so that their investment is not disturbed by intrusion.

## **4. Discussion**

### **4.1. Role of CLCs in the Formalisation Process**

The findings demonstrate that the establishment and composition of the CLCs is intended to encourage local participation and involvement in land tenure and governance at the local level. This promotes transparency in land transactions, empowers women, and ensures gender equality in decision-making. According to the findings, the process of formalising customary land rights into customary estates heavily includes local people. This is vital to enhance process ownership, knowledge transfer, and transparency and accountability in land transactions. Customary land registrations are extremely emotional, and thus must involve the local community to avoid problems. This is supported by the findings of collaborative research conducted by Landesa and CARE in Rwanda, where they reported that Land Tenure Regularisation Programme (LTRP) exhibited a variety of excellent land governance principles, including equity, fairness, access and control of land by all segments of the people, efficiency, participation, and inclusivity<sup>[37]</sup>.

The outcomes also demonstrate the value of CLCs in confirming ownership, and defining, and settling boundary disputes. Government officials are unfamiliar with local customs, making it impossible for the community to rely on them. Therefore, it is essential to involve the community through the CLCs because they are more responsible for their territory and are aware of local needs and facts. Even if this is the case, sometimes over relying on local committee members may yield corruption and bribery due to vested interests. Consequently, people may mistrust leaders, and thereby increasing the potential to jeopardize the formalisation process. In collaboration with this, in their study, Sjaastada & Cousins<sup>[33]</sup> discovered that local commit-

tees are susceptible to elite power struggles as well as to a politics of exclusion. Furthermore, the fact that CLCs aid in the resolution of complaints and confirmation of revisions during public display is also important in defining ownership. This helps to get rid of phony identities and adds the real owners to the registration. Harris & Chilonga<sup>[2]</sup> discovered in their research that resolution of complaints and confirmation of revisions are one of the most essential tasks of CLCs in the formalisation process to guarantee legitimate title ownership. In a survey conducted in Rwanda, Khama & Kayitesi<sup>[38]</sup> also found that, with the involvement of local land governance structures, 94% of respondents were satisfied with the outcome of the objection and correction during the formalisation process.

### **4.2. Formalisation and Tenure Security**

The state recognises and protects formalised and registered land, making it legally binding in terms of tenure security. This protects the vulnerable, especially the poor, the elderly, children, and women, from eviction, expropriation, invasion, and property grabs. Document analysis from the Land Act 2016, show that a certificate issued by the Minister is sufficient proof that a person is the landowner in the event of a legal dispute in any court of law. Additionally, tenure security facilitates the redirection of limited funds that would have been better spent on defending claims to other investments including commercial farming, agri-business, health, education, and transportation. This, in turn, causes multiplier effects with numerous good outcomes such as increased tax income, trade, and foreign earnings. The need for formalising customary land rights to ensure tenure security was confirmed by Munshifwa et al.<sup>[39]</sup> in Zambia. They discovered that growing demand from both foreign and domestic investors, as well as the state's own actions, imposed pressure on customary land, contributing to greater insecurity and altered livelihood habits in the area. As a result, the study proposed that local documentation, such as village and farm licenses, be prepared and issued in order to strengthen locals' rights to land. Furthermore, Msangi et al.<sup>[40]</sup> discovered in Tanzania that having formal land tenure certificates improves perceived land tenure

security, but the effect is relatively larger and more significant for land certificate holders in economically high-potential locations where land is getting more individualised and commoditised.

However, the extent to which title can safeguard one's claim is determined by those responsible for settling disputes, who consider a variety of issues, including whether the title was gained legally. The Land Tenure and Development Technical Committee<sup>[41]</sup> validated this fact by asserting that title holders' rights may be insecure if they were purchased illegitimately or locally contested, if the land is occupied by third parties and cannot be used, or if other, more powerful people have title to the same piece of land and the law rules in their favour. This may be the reason why the Land Tenure and Development Technical Committee<sup>[41]</sup> study concluded that the existence of written documents can significantly increase security of tenure, provided that the documents are trust-worthy, reflect legitimate rights, are accepted by society, the land administration is accessible and trustworthy, the documents are current, and the administration and judiciary refer to them.

#### **4.3. Formalisation and Access to Credit**

The findings also show that formalising customary land makes it easier to obtain credit from financial institutions. Financial institutions typically require a registered title or deed as collateral for a loan to lessen the risk of default and reclaim their money in the event of default. As a result, only those with a registered title or deed are eligible for credit from financial institutions. Households gain greatly from loans, including increased agricultural investments, access to modernised equipment, farm mechanization, usage of improved seed, and availability of herbicides and insecticides. The link between access to loan and agricultural productivity was also validated by Mbudzya et al.<sup>[42]</sup> in their study conducted in Kenya. However, not all registered land may be used to access credit. As has been found, it is not clear as to whether financial institutions will accept customary estate certificates as collateral for credit. This is also exacerbated by the fact that customary estates are only transferable by inheritance according to the law. Furthermore, Umar<sup>[43]</sup> findings from Zambia

revealed that macro-finance institutions such as banks would not accept customary certificates. Finally, Kenyan experience and Rwandan data from Ali et al.<sup>[44]</sup> study revealed that regularising land tenure has had no appreciable effect on loan accessibility.

#### **4.4. Formalisation Leading to Establishment and Growth of Agro-based Industries**

The results have also demonstrated that formalising customary land promotes the development and expansion of agro-based industries. Large capital investments are needed by the agro-based industries to expand operations and provide meaningful returns. The majority of these industries operate in rural areas, where land tenure is primarily customary and undocumented. The basis for enterprises to locate in rural areas is that they can obtain inexpensive labor, cheap land, and raw materials as well as lower production costs because they need a sizable amount of land for their investment in homes, factories, and offices. However, the state's recognition and protection of land is necessary for these sectors to remain viable, particularly in light of the rising demand for land brought on by the world's population explosion. These enterprises produce raw materials and finished goods that cannot be used just domestically since there is a demand for them on the global market. The growth of these enterprises leads to improvement of the transportation corridor to speed up trade by enabling a simple and speedy flow of products and services. This, in turn, enhances investment opportunities and promotes agricultural commercialisation within the rural areas. Melese & Bulte<sup>[45]</sup> got similar results in a study in Ethiopia where they saw significant formation and growth of agro-based enterprises following the launch of the land registration and certification programme in 1998. However, in other countries such as Rwanda, Abbot & Mugisha<sup>[46]</sup> found scant empirical evidence that Land Tenure Regularisation (LTR) has influenced landowners to utilise land certificates as collateral to obtain official loans to operate farms and/or non-farm businesses.

From the results it can be opined that with registered titles to land, PO's investment may not be disturbed by land problems. In addition, donors in many nations

may lend them money or give them grants, as proven by this study. They can use the funds to invest in training, acquiring modern equipment, farm mechanization, and transportation of raw and processed products. This fact is validated by Umar<sup>[43]</sup> research in Zambia, where he found that the issuance of customary certificates following the formalisation of land rights led to improved access to credit from micro-financial institutions by farmer cooperatives and local savings and credit cooperatives. Additionally, the majority of agricultural support is currently directed to PO to alleviate poverty, increase capacity, and empower entrepreneurs. Cooperatives serve to improve agricultural market competition while also providing direct access to international and national markets. The expansion of PO has a cascading impact on other economic sectors, including tourism, as well as the creation of new jobs, the generation of foreign exchange, urbanisation, and the reduction of poverty. Furthermore, Gains from PO may be used to fund additional projects in several of sectors, including healthcare, transportation, and education.

#### **4.5. Limitations and Future Research Perspectives**

The study encountered difficulties in conducting interviews with participants due to cultural constraints, particularly in the Northern Region, where men make the majority of decisions on land. So, despite the fact that females were represented equally in the focus group discussions, their contributions were minimal. Furthermore, there was a dearth of literature on the study sites, especially in relation to the topic. It was not possible to gather empirical quantitative evidence to support the contributions from the chosen interviews because the research was focused on the participants' perceptions of the topic. To validate the results of this study, future research should concentrate on employing a mixed method approach.

### **5. Conclusions**

The study examined the effects of formalising customary land into customary estates to foster agricultural commercialisation in rural areas of Malawi,

Specifically, the study focused on the role of CLCs in the formalisation process; the impacts of formalising customary land on tenure security, access to credit and establishment and growth of agro-based industries.

The findings show that the establishment of CLCs is meant to formalise customary land transactions, increase transparency and accountability in land administration and management. CLCs play an important role in the formalisation of customary land rights since they help to confirm ownership, clarify and settle boundary conflicts, address objections, and ratify amendments during public display. However, for formalisation to be successful and lasting, corruption, bribery, and vested interests must be addressed during the process. The evidence presented also reveals that formalisation leads to tenure security. Furthermore, title issued after formalisation can be used as a collateral to access credit, which in turn helps in the establishment and growth of agro-based industries through enhanced investments.

The study has ramifications for scholars and land administrators since it offers context for additional research and encourages government actors and development practitioners to incorporate formalisation of customary land into their land reform and development projects and programmes.

Therefore, in order to foster agricultural commercialisation, formalisation of customary land should feature highly on government land reform agenda and be part of land policy.

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Conceptualization, draft paper and final paper writing, M.K.H.; Review and editing, D.C. All authors have read and agreed to the published version of the manuscript.

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Not applicable.



## Informed Consent Statement

Informed consent was obtained from all subjects involved in the study.

## Data Availability Statement

The original contributions presented in this study are included in the article. Further inquiries can be directed to the lead author.

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## Conflicts of Interest

The authors declare no conflicts of interest.

## Appendix A

**Table A1.** Number of Parcels Adjudicated and Demarcated in the Study Sites.

District	Group Village Area	Total Number of Parcels Adjudicated and Demarcated
Phalombe	Maoni	2187
Kasungu	Ching'amba	1115
Rumphi	Chimalabanthu	900
Rumphi	Chidiwo	1221

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