

HOW ARE THE LAWS OF MALAWI PROMOTING WOMEN'S LAND RIGHTS?



Civic Awareness Materials for Community Facilitators

May 2018



Konrad
Adenauer
Stiftung



WOMEN'S LEGAL RESOURCES CENTRE
WOLREC

How are the Laws of Malawi Promoting Women's Land Rights?

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Broad objectives

The civic awareness activities in this manual are meant for projects that are raising awareness about the new land laws that were passed in Malawi in 2016. The materials are designed from a women's land rights perspective, which also provides the opportunity to spread the knowledge about how other gender related laws in Malawi are connected to the agenda of safeguarding women's land rights.

The civic awareness materials have been developed to:

1. Reduce factors that are responsible for discriminatory practices in access to land and resources for all groups of people especially women.
2. Strengthen land use and tenure rights for women through improved functioning of legal, institutional and policy frameworks.

Target audience

The target audience for these awareness materials is the general public-organized community groups in patrilineal and matrilineal set-ups, couples and traditional leaders (land tribunals). These will be mobilised by community facilitators, who will systematically take the community through each of the eight activities over a period of time.

Learning objectives

By the end of all the activities, targeted women and men in communities will be able to:

1. Define the difference between access, control and ownership of land.
2. Explain the causes of tenure insecurity amongst women in different settings (e.g. patrilineal and matrilineal) and the implications on development.
3. Describe the connection between women's land tenure insecurity and issues of discrimination, poor inheritance rights and domestic violence.
4. Discuss the key messages for promoting tenure security amongst both women and men under the new land laws.
5. Explain the legal avenues that can be used to strengthen women's land tenure security under the new land laws.
6. Suggest ways of overcoming obstacles to the agenda to use the new land law to improve women's land tenure security in their area.
7. Take action to demand the practical application of the new land laws in ensuring that women have access, control and ownership of land in both patrilineal and matrilineal settings.

Glossary of legal sources

Activity	Legal sources
Activity 2: Defining Access, Control and Ownership of Land	<i>Constitution, Section 5:</i> invalidates any law (including customary law) that is inconsistent with the Constitution.
Activity 3: How is sex discrimination directly related to issues of security of land tenure and large inequalities in land access/control for women?	<i>Gender Equality Act:</i> <i>Section 4:</i> definition of sex discrimination <i>Section 5:</i> punishment for sex discrimination
Activity 4: The connection between land related matters and the Prevention of Domestic Violence Act	<i>Prevention of Domestic Violence Act:</i> <i>Section 2:</i> definitions of various forms of domestic violence <i>Section 5:</i> application for a protection order <i>Section 11:</i> application for an occupation order <i>Section 13:</i> effect of an occupation order <i>Section 15:</i> application for a tenancy order
Activity 5: How does land grabbing perpetuate land tenure insecurity?	<i>a) Deceased Estates (Wills, Inheritance and Protection Act:</i> <i>Section 84:</i> definition of and punishment for property grabbing <i>Section 4:</i> customary law not to apply in inheritance matters <i>Section 17(1):</i> persons entitled to inherit property where there is no will <i>Section 17(2):</i> distribution of inheritance property in polygamous unions <i>Section 17(4):</i> upon remarriage, inherited property on customary land to go to children <i>Sections 6 and 7:</i> writing a valid will <i>b) Marriage, Divorce and Family Relations Act:</i> <i>Section 2:</i> definition of what counts as non-monetary contribution to household property

<p>Activity 6: How can women apply for and obtain a customary estate</p>	<p><i>Customary Land Act:</i></p> <p><i>Section 5 (1) & (2):</i> composition of customary land committees</p> <p><i>Section 5 (3):</i> term of office for land committees</p> <p><i>Section 5 (4):</i> reasons that can make a land committee member vacate office</p> <p><i>Section 8:</i> land clerks as employees of local government</p> <p><i>Sections 20 - 24:</i> grant and management of customary estates</p> <p><i>Section 22 (2):</i> applications from women and persons with disabilities not to be treated less favourably</p>
<p>Activity 7:Applying for joint ownership of land</p>	<p><i>a) Deceased Estates (Wills, Inheritance and Protection Act:</i></p> <p><i>Section 6:</i> will writing</p> <p><i>b) Customary Land Act:</i></p> <p><i>Section 20 (2):</i> a customary estate can be inherited including by a Will</p> <p><i>Section 21:</i> those who qualify to apply for a customary estate</p> <p><i>c) Marriage, Divorce and Family Relations Act:</i></p> <p><i>Section 74:</i> distribution of property upon divorce</p>

Common terms

The terms that commonly appear in this manual are:

Land tenure security	Is the assurance that the one who is using and/or holds the land for an agreed period is certain. Tenure security requires property rights that are clear in purpose and duration, and that are accepted as legal and legitimate.
Matrilineal	System of marriage where the lineage follows the mother's line. In vernacular, matrilineal marriages are in two forms— <i>chikamwini</i> or <i>chitengwa</i> .
Patrilineal	System of marriage where the lineage follows the father's line. In vernacular, the patrilineal marriages observe the <i>lobola</i> (bride wealth) culture.
Matrilocal	Situation where a husband resides in his wife's village. Not all matrilineal marriages are matrilocal. It is only the <i>chikamwini</i> marriages that are matrilocal.
Patrilocal	Situation where a wife resides in her husband's village. The patrilocal system is practiced in the <i>lobola</i> and <i>chitengwa</i> marriage arrangements.

Tips for the facilitator

1. Always emphasise on the key messages that appear in bold at the end of each activity.
2. The time frames under each activity are mere suggestions. Ensure that the participants have fully understood the topic before moving to the next activity.
3. The illustrative activities are meant to inspire ideas for role-plays and other methods of participatory engagement with the participants. Feel free to adapt the scenes accordingly depending on your setting.
4. Always introduce the topics in a constructive and non-confrontational manner, making it clear that the agenda is to ensure that the community achieves its highest potential by valuing and promoting women's land rights. Manage all tensions sensitively.
5. Constantly take notes of the women's and men's perspectives to the questions that are asked at the end of each activity. Ensure that the communities arrive at concrete action points to facilitate change, including responsible persons. Follow up on such action points.
6. Routinely create a conducive environment for each participant to be actively involved in all discussions.

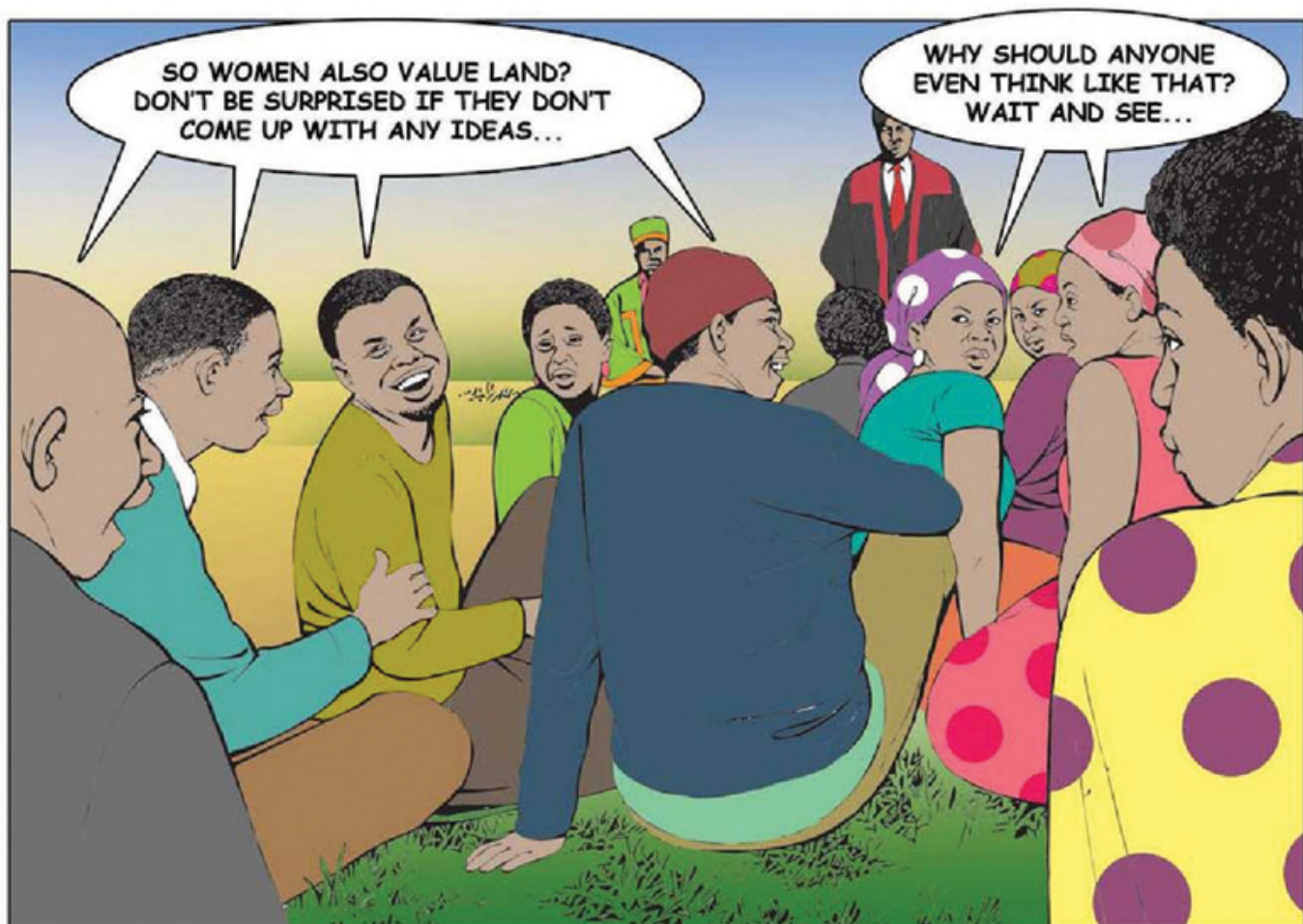
Activity 1: Is Land Significant to both Men and Women?

AS YOU KNOW, I WAS FORTUNATE TO JOIN THE DELEGATION THAT WENT TO LIWASA TO LEARN FROM OUR FRIENDS. THERE RURAL VILLAGERS, WHETHER MEN OR WOMEN, DON'T KNOW POVERTY. WHEN WE ASKED THEM THEIR SECRET THEY TOLD US 'LAND'. AND I WANT TO ASK YOU TODAY HOW IMPORTANT IS LAND TO US?

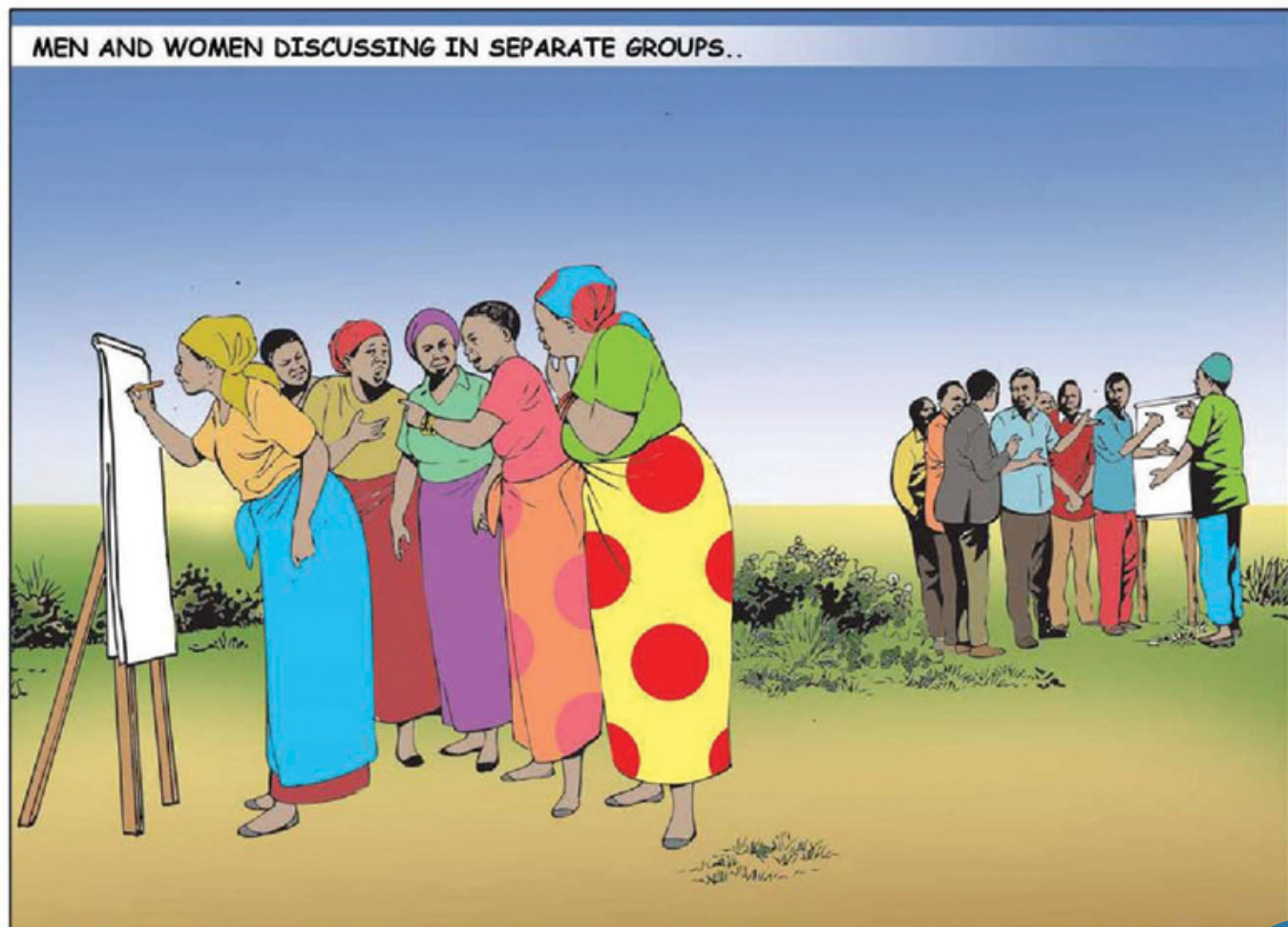


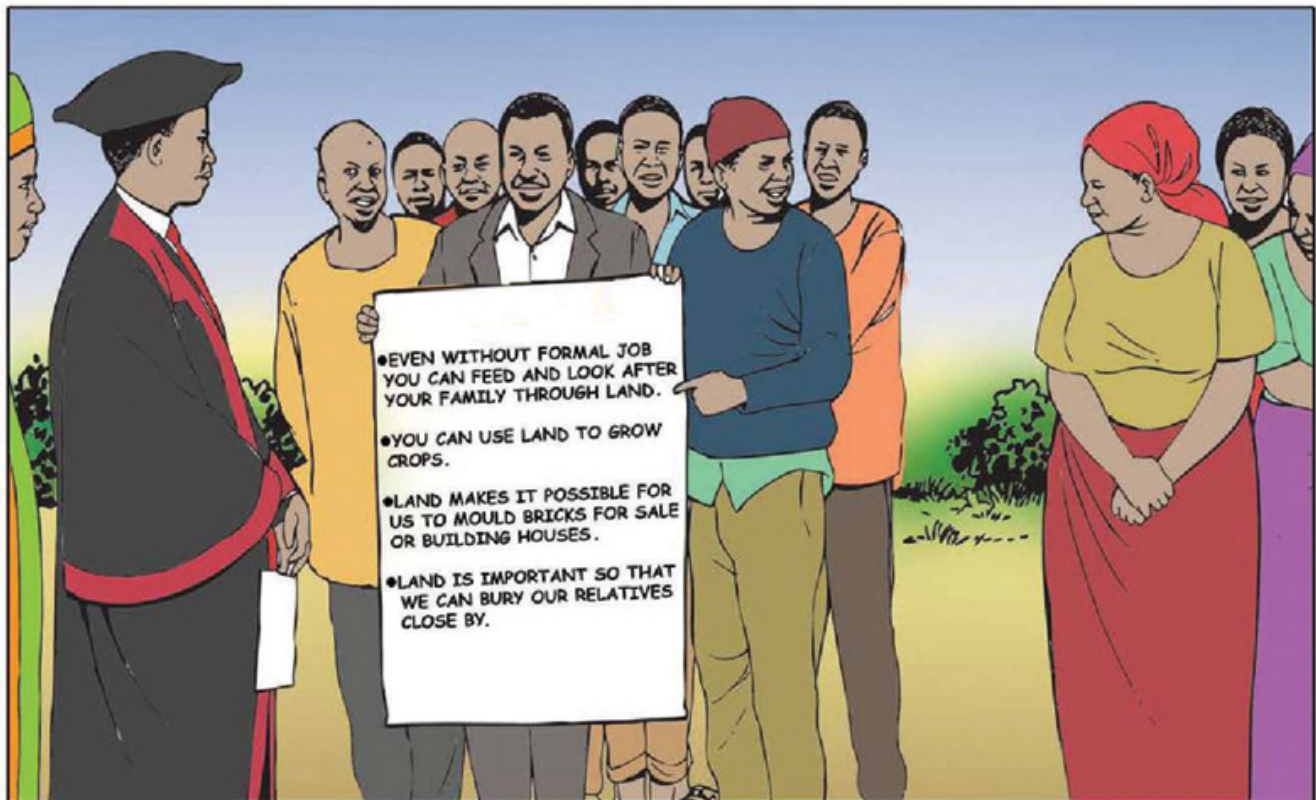
THAT'S A VERY GOOD QUESTION COUNCILLOR. BUT I KNOW THE MEN IN THIS VILLAGE. IF YOU JUST ASK LIKE THAT, THEY'LL BE THE ONLY ONES TALKING. SO WHY DON'T MEN AND WOMEN GO INTO SEPARATE GROUPS, DISCUSS, THEN COME AND TELL US WHAT LAND MEANS TO THEM.





MEN AND WOMEN DISCUSSING IN SEPARATE GROUPS..





I THINK BOTH YOUR ANSWERS CLEARLY SHOW US THAT BOTH MEN AND WOMEN VALUE LAND AND THEY NEED LAND. HOWEVER, 'NEEDING' LAND IS NOT THE SAME AS 'HAVING IT' FOR ACTUAL USE OR REAPING BENEFITS FROM IT. IT COULD BE THAT NOT ALL WOMEN AND MEN ARE ABLE TO ENJOY THE OPPORTUNITIES THAT LAND PRESENTS OR PROVIDES.





With the new Customary Land Act, the Traditional Allocations System of Customary Land should ensure that everyone has a piece of land.

Time: 1-2 hours

Objective: To understand the value that women and men attach to land

The facilitator should use the following to engage the participants:

1. What are the similarities and differences in the way men and women value land?
2. What to others say about the importance of land either to men or women, or to everyone in the community?
3. What are some of the reasons that are causing either women or men to enjoy benefits of land in the community?

The facilitator should observe that the exercise demonstrates that everyone deserves to benefit from land, and that the exercise is a good entry point to the discussion of issues of land access, control and ownership (and how these impacts on benefits that women or men get from land).

Activity 2: Defining Access, Control and Ownership of Land

MY WIFE FARMS IN THE LAND THAT I WAS GIVEN BY MY CLAN. HOWEVER, SHE USUALLY COMPLAINS THAT SHE HAS NO LAND THOUGH SHE IS FREE TO DO FARMING ANYTIME. CAN YOU UNDERSTAND WOMEN?

WHO MAKES DECISIONS OVER THE LAND—WHETHER TO FARM OR NOT? ABOUT WHAT CROPS TO GROW? WHAT TO DO WITH THE CROPS?



I DO. IT IS MY LAND. IT'S NOT MY FAULT THAT SHE CAN'T OWN LAND IN OUR PATRILINEAL CULTURE. HERE WOMEN HAVE NO LAND RIGHTS IN THEIR OWN RIGHT ALTHOUGH THEY MAY BE BORN IN THE AREA. THEY CAN ONLY INDIRECTLY ACCESS LAND THROUGH A HUSBAND, SONS OR PARENTS.



THAT EXACTLY WHAT I TELL MY THREE WIVES. THEY COMPLAIN THAT I LEAVE THE FARMING WORK TO THEM, AND THAT THEY DON'T SEE WHAT I DO WITH THE MONEY THAT I MAKE AFTER SELLING THE CROPS. I CAN DO AS I PLEASE WITH BOTH MY LAND AND MONEY.

I THOUGHT YOU ARE FROM A MATRILINEAL CULTURE IN THE CENTRAL REGION? HOW COME YOUR WIVES USE YOUR LAND?



OH, IN OUR AREA WE PRACTICE CHITENGWA, AND THIS REQUIRES THE WIFE TO MOVE TO A HUSBAND'S VILLAGE WHICH HAS BEEN OF BENEFIT TO ME BECAUSE MY WIVES PROVIDE VERY CHEAP LABOUR.

SO WHAT HAPPENS TO THE LAND THAT YOUR WIVES MAY HAVE OWNED AT THEIR NATAL VILLAGE BEFORE THEY GOT MARRIED?



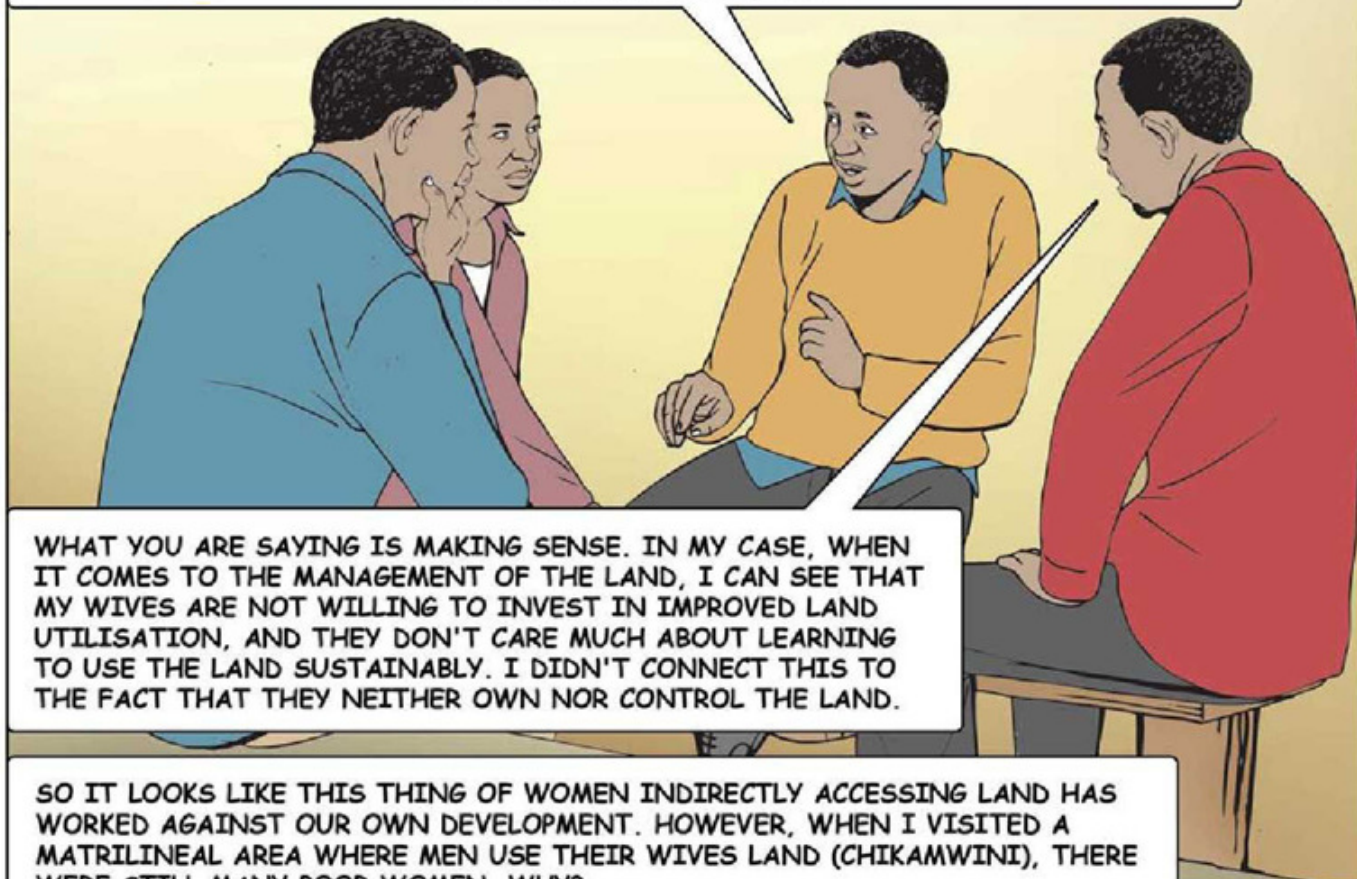
AT ONE WORKSHOP WE WERE EXPOSED TO THE REALITY THAT WHEN THE WIFE MOVES FROM HER VILLAGE TO HER HUSBAND'S VILLAGE, USUALLY HER RELATIVES TAKE OVER HER LAND DUE TO LAND PRESSURE. AS SUCH, WHEN SHE RETURNS HOME UPON DIVORCE OR BEING WIDOWED, SHE FINDS HERSELF LANDLESS. HER RELATIVES CAN EVEN BE HOSTILE IF SHE TRIES TO CLAIM SOME LAND. IT'S SAD.

BUT THE WOMEN SHOULDN'T REALLY WORRY ABOUT LAND SINCE THEY CAN ALWAYS REMARRY AND BE TAKEN CARE OF BY ANOTHER MAN.

BOTH YOUR ATTITUDES ARE WRONG. THERE IS A DIFFERENCE BETWEEN ACCESS TO LAND AND CONTROL OVER LAND. THE FACT THAT A WOMAN IS ONLY ABLE TO ACCESS LAND BELONGING TO A HUSBAND IS CALLED 'INDIRECT ACCESS,' AND NOT GOOD ENOUGH. SHE HAS TO MAKE DECISIONS OVER THE LAND TOO, EVEN IF IT MEANS JOINTLY WITH A HUSBAND.

WHY IS THAT IMPORTANT? ISN'T THE MAN THE HEAD OF THE FAMILY? SO ARE YOU SAYING THAT WOMEN SHOULD EVEN OWN LAND?

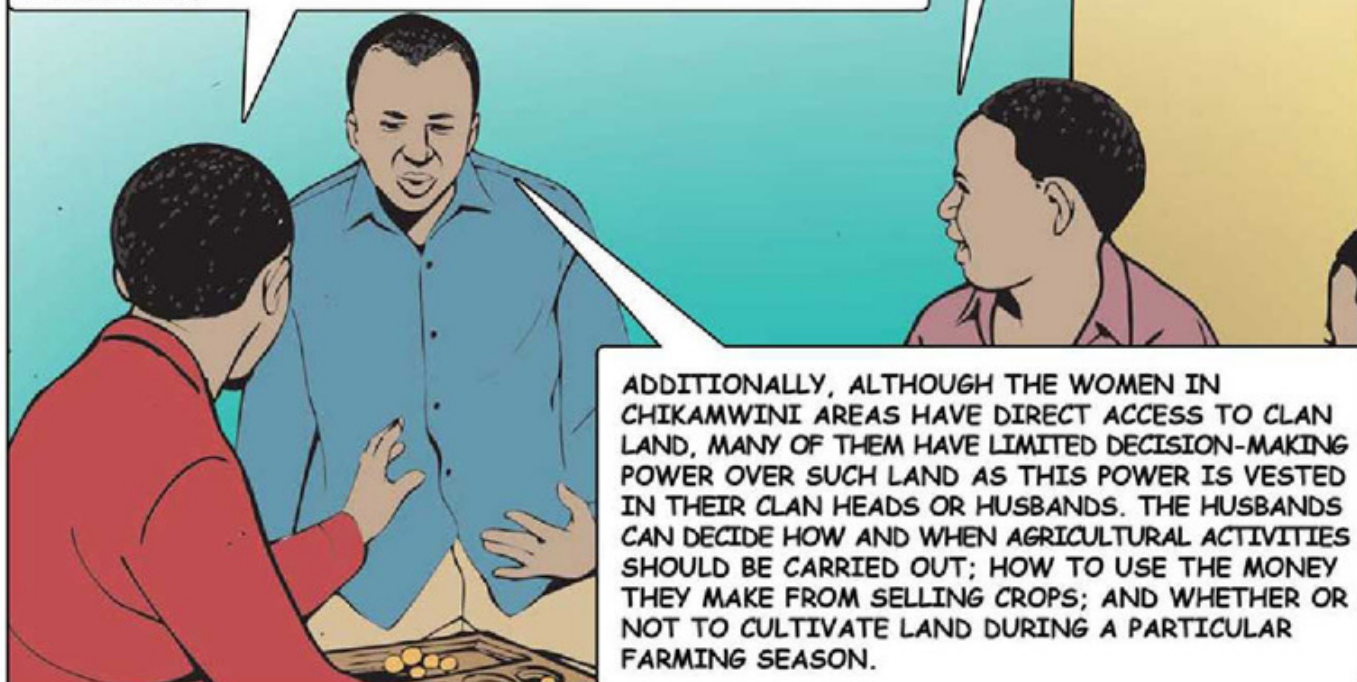
UNDER THE CUSTOMARY LAND ACT, BOTH MEN AND WOMEN CAN OWN LAND IN THEIR OWN NAME, OR JOINTLY AS A FAMILY, ANYWHERE IN MALAWI. WE NEED EMPOWERED WOMEN BECAUSE IF A RURAL PERSON DOES NOT OWN OR HAVE CONTROL OVER LAND, IT IS DIFFICULT TO ESCAPE POVERTY, EDUCATE CHILDREN, EARN INCOME AND TO INCREASE ECONOMIC PRODUCTIVITY.



WHAT YOU ARE SAYING IS MAKING SENSE. IN MY CASE, WHEN IT COMES TO THE MANAGEMENT OF THE LAND, I CAN SEE THAT MY WIVES ARE NOT WILLING TO INVEST IN IMPROVED LAND UTILISATION, AND THEY DON'T CARE MUCH ABOUT LEARNING TO USE THE LAND SUSTAINABLY. I DIDN'T CONNECT THIS TO THE FACT THAT THEY NEITHER OWN NOR CONTROL THE LAND.

SO IT LOOKS LIKE THIS THING OF WOMEN INDIRECTLY ACCESSING LAND HAS WORKED AGAINST OUR OWN DEVELOPMENT. HOWEVER, WHEN I VISITED A MATRILINEAL AREA WHERE MEN USE THEIR WIVES LAND (CHIKAMWINI), THERE WERE STILL MANY POOR WOMEN. WHY?

THE FACT THAT WOMEN HAVE DIRECT ACCESS TO, CONTROL OVER OR EVEN OWNERSHIP OF LAND WILL NOT AUTOMATICALLY TRANSLATE INTO PRODUCTIVE LAND AND POVERTY ERADICATION. WOMEN NEED FARM INPUTS AND MARKETS TO MAKE SUCH LAND PRODUCTIVE.



ADDITIONALLY, ALTHOUGH THE WOMEN IN CHIKAMWINI AREAS HAVE DIRECT ACCESS TO CLAN LAND, MANY OF THEM HAVE LIMITED DECISION-MAKING POWER OVER SUCH LAND AS THIS POWER IS VESTED IN THEIR CLAN HEADS OR HUSBANDS. THE HUSBANDS CAN DECIDE HOW AND WHEN AGRICULTURAL ACTIVITIES SHOULD BE CARRIED OUT; HOW TO USE THE MONEY THEY MAKE FROM SELLING CROPS; AND WHETHER OR NOT TO CULTIVATE LAND DURING A PARTICULAR FARMING SEASON.

YOU ARE RIGHT. I CAN SEE FROM MY BROTHER-IN-MARRIAGE THAT ALTHOUGH HE LIVES IN A CHIKAMWINI AREA, HE STILL HAS A LOT OF DECISION MAKING POWER OVER THE LAND AS HEAD OF HOUSEHOLD. ONE YEAR, HE EVEN DECIDED THAT HIS WIFE SHOULD NOT GROW VEGETABLES FOR SALE AT THE DIMBA JUST TO SHOW HER THAT HE IS IN CONTROL. OF COURSE IN THE END IT WAS THE WHOLE HOUSEHOLD THAT LOST INCOME.



AND I KNOW OF A MAN WHO EVEN DECIDED TO USE THE WIFE'S LAND FOR MOULDING BRICKS INSTEAD OF FARMING IN ORDER TO MAKE QUICK MONEY. HOW DO WE MEN THINK SOMETIMES?

YOU KNOW GENTLEMEN, IT IS NOT WRONG FOR A MAN TO BE HEAD OF HOUSEHOLD, EVEN IN A CHIKAMWINI SETTING. HOWEVER, IT IS WRONG WHEN MEN START ABUSING THAT AUTHORITY BY PERPETUATING ABUSIVE CONDUCT THAT NEGATIVELY AFFECTS THE LAND RIGHTS OF WOMEN AND THE DEVELOPMENT OF THEIR HOUSEHOLDS. WE NEED TO SHARE POWER OVER LAND WITH WOMEN.

AT THE END OF THE DAY, THE CUSTOMARY LAND ACT IS CREATING AN ENABLING ENVIRONMENT FOR BOTH MEN AND WOMEN TO HAVE ENTITLEMENT TO LAND REGARDLESS OF WHETHER THEY ARE IN PATRILINEAL OR MATRILINEAL SYSTEMS OF MARRIAGE. ENSURING THAT WOMEN HAVE PERMANENT ACCESS AND CONTROL OVER THEIR OWN LAND OR LAND THAT THEY JOINTLY HOLD WITH OTHER FAMILY MEMBERS WILL GIVE THEM A SENSE OF SECURITY OVER THE LAND THAT THEY DEPEND ON FOR THEIR LIVELIHOOD.



There are large inequalities in land access and control for women. Under the Constitution, men and women have equal property rights. Culture or customary law cannot be an excuse for violating women's property or land rights since any law that is inconsistent with the Constitution is deemed invalid.

The right to own land and remain one's land and make use of and profit from that land in ways the individual or groups value it is often insecure for the rural poor, children and women. With the new Customary Land Act, the traditional system of customary land should ensure that everyone has a piece of land.

Time: 2 hours

Objective: To introduce the topic of land tenure insecurity by distinguishing the concepts of land 'access,' 'control' and ownership.'

The facilitator should prompt a discussion with the community on the following issues?

1. What does it mean 'to make use of land?
2. What does it mean 'to make use of land profit from land? Can one make use of and not profit from land?
3. What does it mean 'to own land?
4. In which category (access, control, ownership) do men and women fall in the community? Does any of the issues in the story (or similar practices) happen here?
5. What is the impact of this?

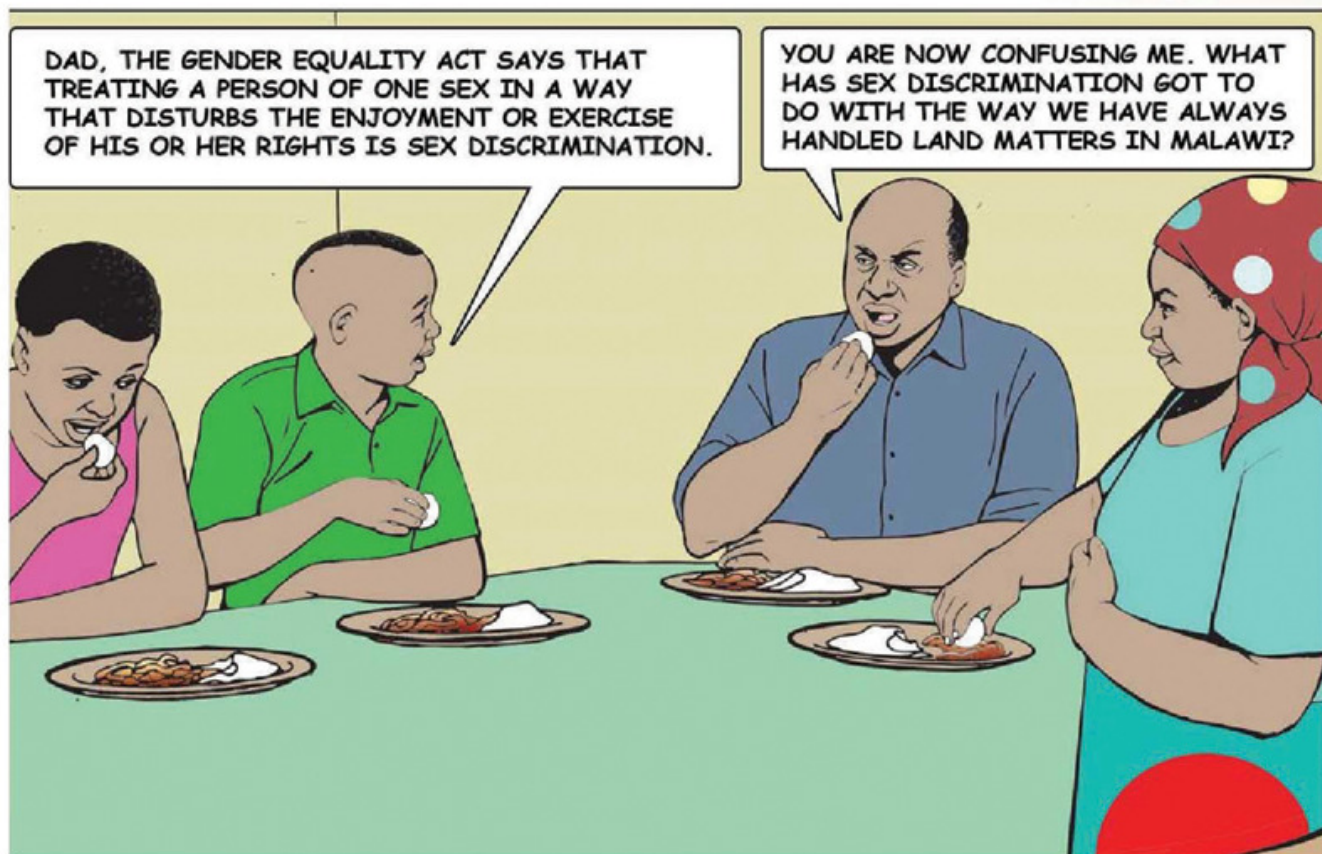
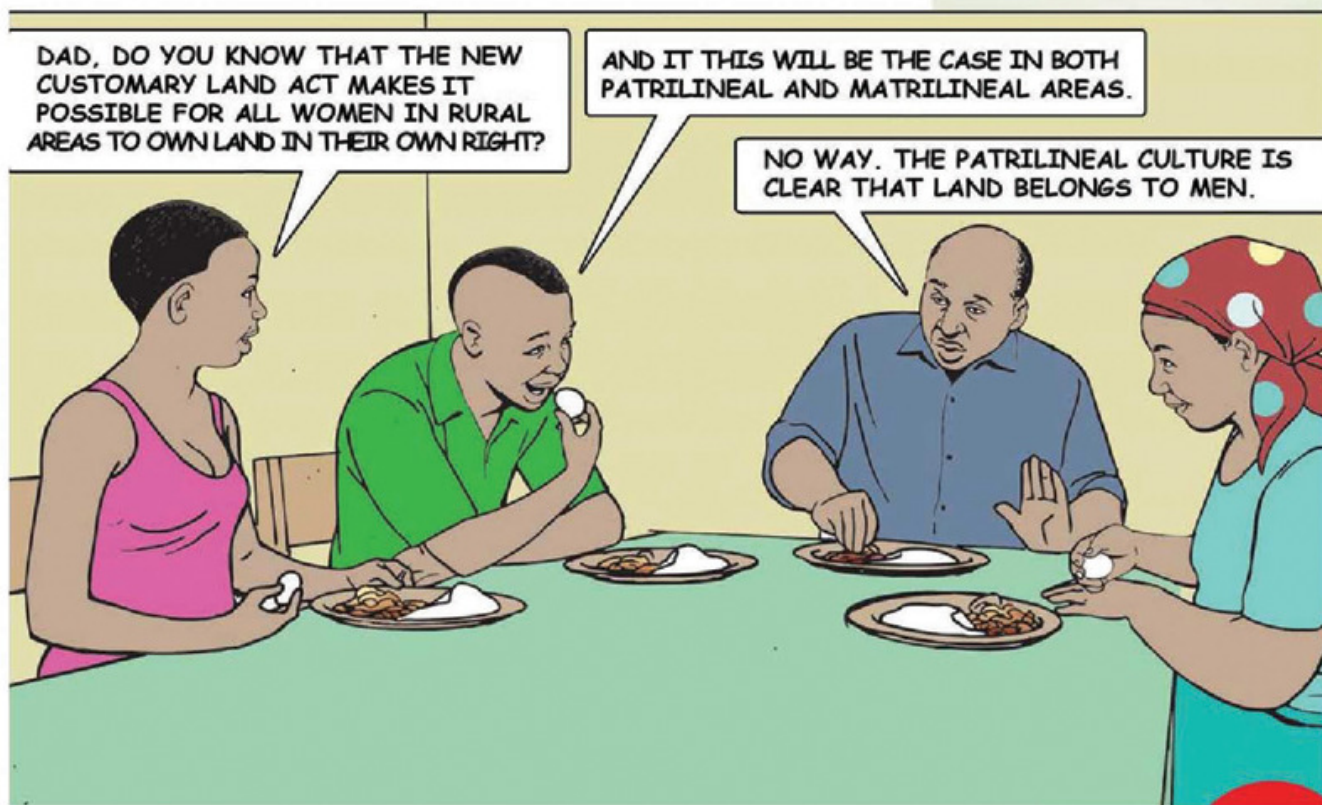
A further idea for discussion/role play

(Excerpt from Action Aid, Gender Audit of Land Related Bills in Malawi, 2013)

When my husband died, I came back to my village to live with my parents. I took with me the three children I had with my late husband. I started farming with my mother and father and after harvesting, the maize was stored in one *nkhokwe* (grainery) which belonged to my parents. I worked so hard and yet i had no control of the foods crop I laboured for. I had no freedom because it was not my piece of land. For 24 years, I could not sale anything and as a result, could not afford to support my children or myself.

- Is there anything of concern in the scenario above?
- What do we think were the root causes of this situation?
- What do you think were some of the effects of this situation on the widow and her children?
- Does the story remind us of any situation that we have witnessed in our community?
- If any/several of you complete the story so as to have a happy ending, how would you complete it?

Activity 3: How is sex discrimination directly related to issues of security of land tenure and large inequalities in land access/control for women?



A LOT, AND THIS IS IN BOTH PATRILINEAL AND MATRILINEAL SETTINGS.



FOR EXAMPLE, IT IS SEX DISCRIMINATION WHEN CUSTOMARY LAWS AND PRACTICES ACCORD DIFFERENT LAND OWNERSHIP AND/OR INHERITANCE RIGHTS TO WOMEN AND MEN, MOSTLY LEAVING WOMEN WITH WEAKER RIGHTS.

SEX DISCRIMINATION ALSO HAPPENS WHEN CUSTOMARY LAWS AND PRACTICES SAY WOMEN'S ACCESS TO LAND ACHIEVED THROUGH MEN AS HUSBANDS OR SONS; OR WHEN THEY ONLY CONSIDER MEN (AS HUSBANDS, FATHERS, UNCLES, BROTHERS OR SONS) AS THE MAIN DECISION MAKERS OVER LAND MATTERS.



ON THE RADIO, THEY WERE ALSO SAYING THAT DISCRIMINATION HAPPENS THROUGH THE OPPRESSION OF WOMEN IN MAKING DECISIONS OVER LAND AT HOUSEHOLD LEVEL, EVEN WHERE IT IS 'THEIR' LAND IN MATRILINEAL AREAS. SOME MEN EVEN EXPLOIT WOMEN AS A SOURCE OF LABOUR IN COMMERCIAL FARMING WHILE EXCLUDING THEM IN ENJOYING OR MAKING DECISIONS OVER THE BENEFITS OF SUCH LABOUR. THAT IS ALSO DISCRIMINATION.

ALSO, SOME MEN DELIBERATELY EXCLUDE THEIR WIVES FROM A TITLE DEED JUST BECAUSE THEY ARE WOMEN, EVEN THOUGH THE WIFE MAY HAVE MADE A DIRECT OR INDIRECT CONTRIBUTION TO THE ACQUISITION OF SUCH LAND AND/OR ITS DEVELOPMENT.



WOULD THIS ALSO MEAN THAT IT IS SEX DISCRIMINATION TO DISPOSSESS WOMEN OF LAND WHEN THEIR HUSBANDS DIE?

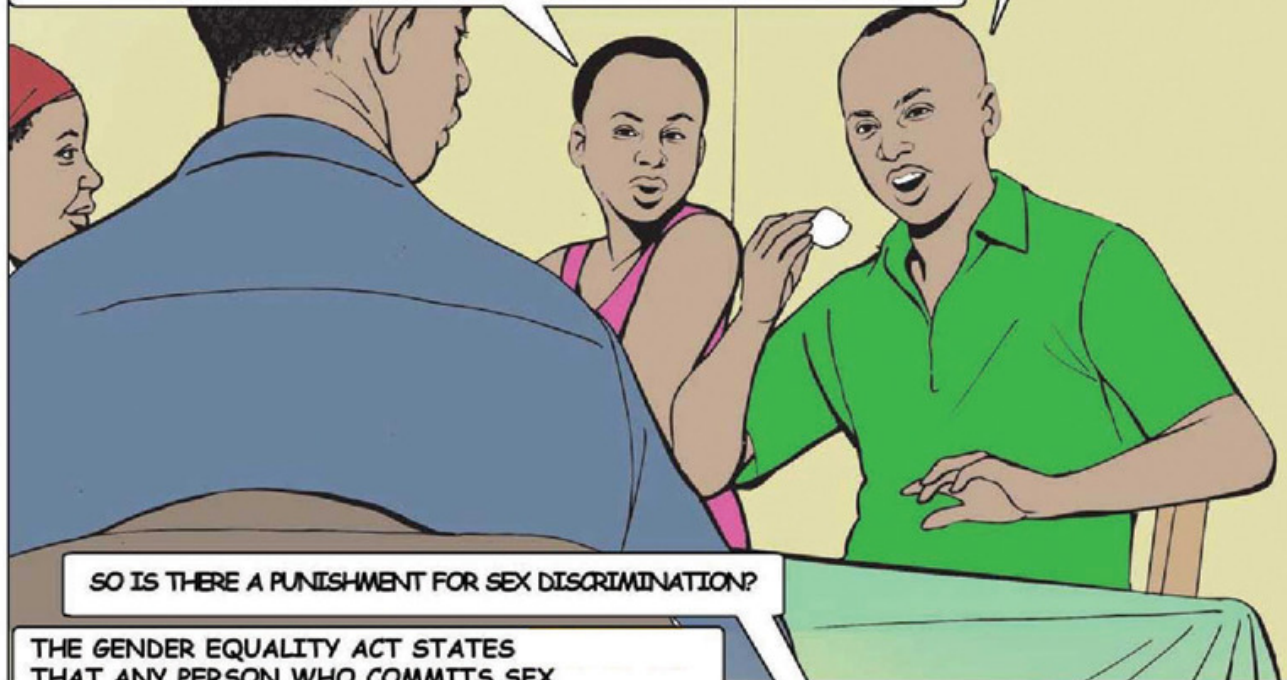
YES!

YES!



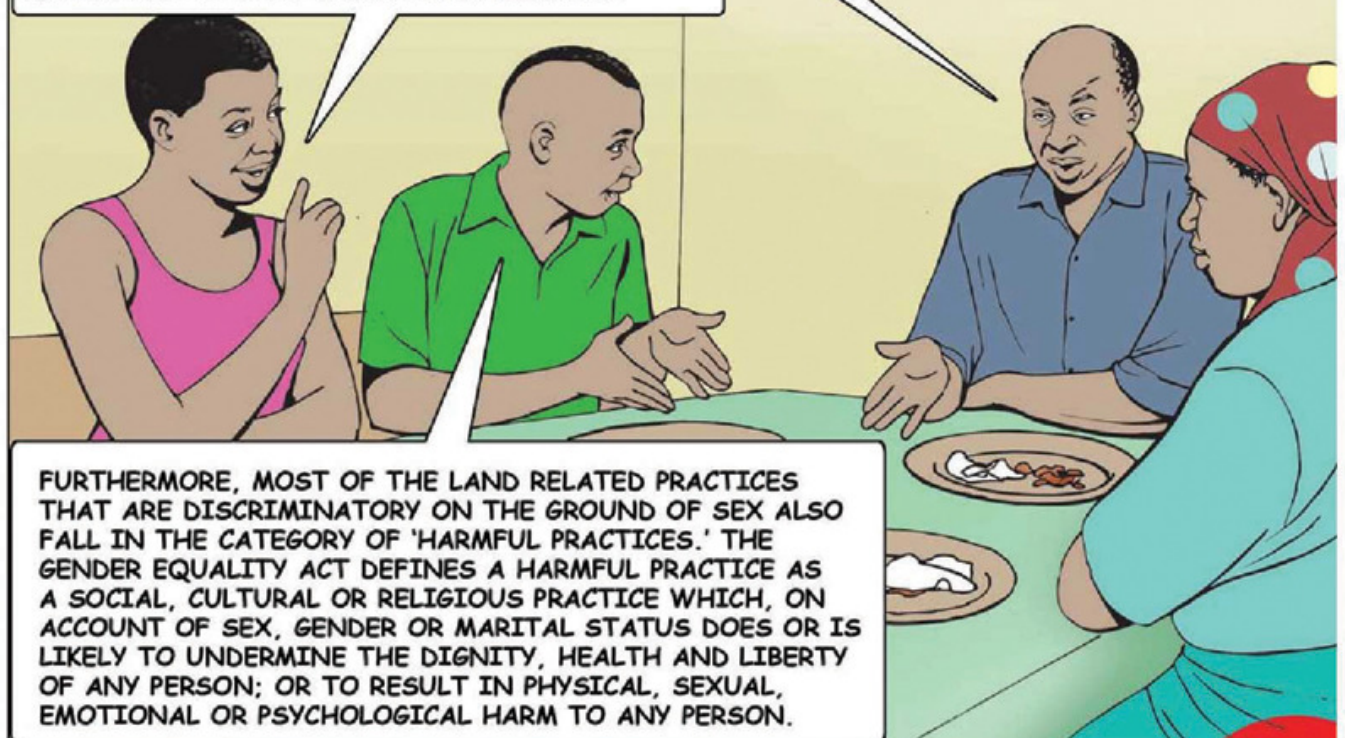
APART FROM THE GENDER EQUALITY ACT, THE CONSTITUTION OF THE REPUBLIC OF MALAWI PROHIBITS DISCRIMINATION OF ANY TYPE. NO ONE IS ALLOWED TO DISCRIMINATE AGAINST ANOTHER PERSON ON THE BASIS OF RACE, COLOUR, SEX, LANGUAGE, POLITICAL OR OTHER OPINION, NATIONALITY, ETHNIC OR SOCIAL ORIGIN, DISABILITY, PROPERTY, BIRTH OR OTHER STATUS.

THE CONSTITUTION SPECIFICALLY SAYS THAT WOMEN HAVE THE RIGHT NOT TO BE DISCRIMINATED AGAINST ON THE BASIS OF THEIR GENDER OR MARITAL STATUS; AND HAVE EQUAL CAPACITY TO ACQUIRE AND MAINTAIN RIGHTS IN PROPERTY, WHETHER INDEPENDENTLY OR IN ASSOCIATION WITH OTHERS.

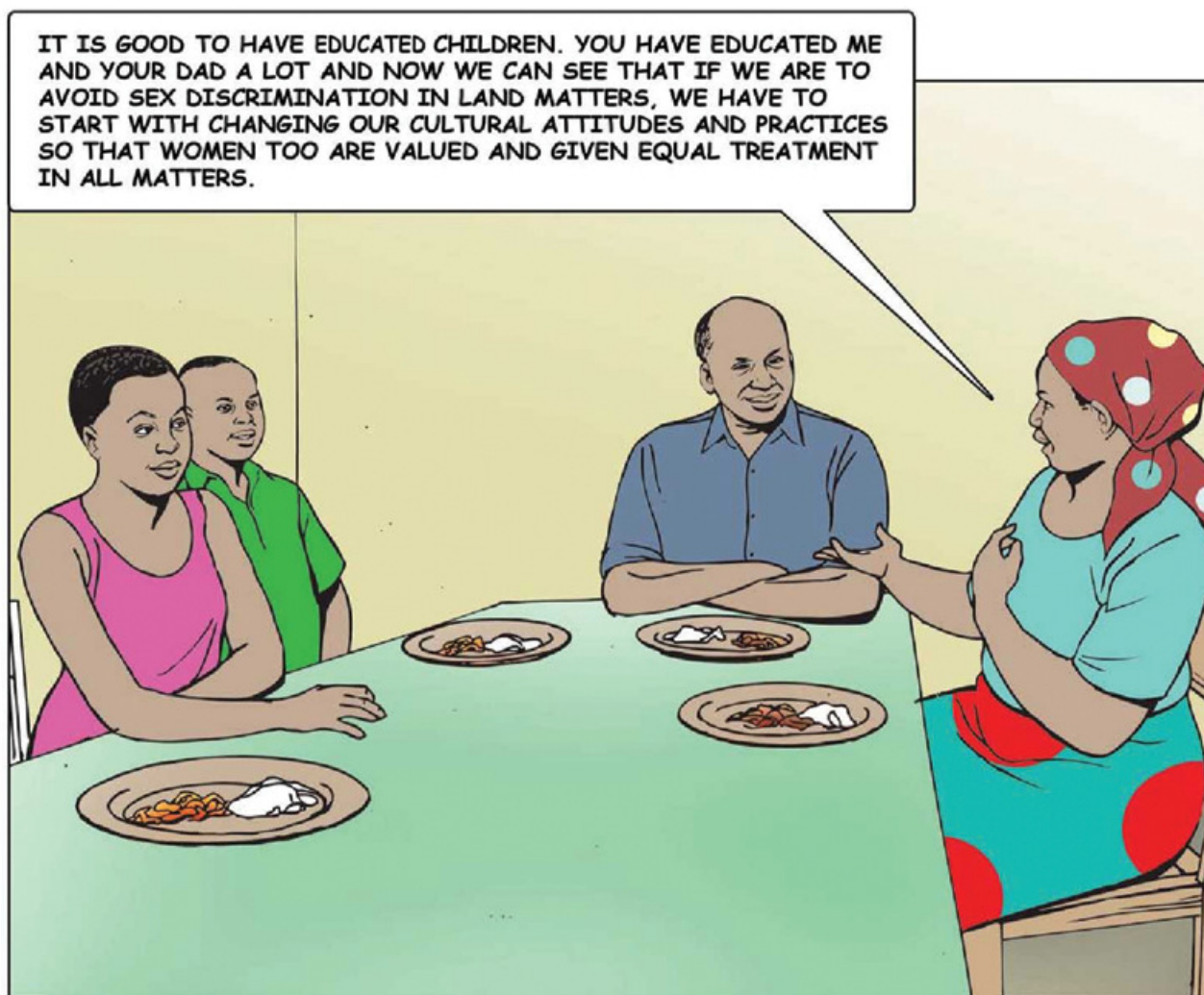


SO IS THERE A PUNISHMENT FOR SEX DISCRIMINATION?

THE GENDER EQUALITY ACT STATES THAT ANY PERSON WHO COMMITS SEX DISCRIMINATION WILL BE FINED K1 MILLION AND SENTENCED TO FIVE YEARS IMPRISONMENT.



FURTHERMORE, MOST OF THE LAND RELATED PRACTICES THAT ARE DISCRIMINATORY ON THE GROUND OF SEX ALSO FALL IN THE CATEGORY OF 'HARMFUL PRACTICES.' THE GENDER EQUALITY ACT DEFINES A HARMFUL PRACTICE AS A SOCIAL, CULTURAL OR RELIGIOUS PRACTICE WHICH, ON ACCOUNT OF SEX, GENDER OR MARITAL STATUS DOES OR IS LIKELY TO UNDERMINE THE DIGNITY, HEALTH AND LIBERTY OF ANY PERSON; OR TO RESULT IN PHYSICAL, SEXUAL, EMOTIONAL OR PSYCHOLOGICAL HARM TO ANY PERSON.



The right to own land and remain on one's land, and make use of and profit from that land in ways the individual or groups value it is often insecure for the rural poor, children and women. The system of patriarchy promotes sex discrimination since it discriminates against women in the ownership and control of land resources.

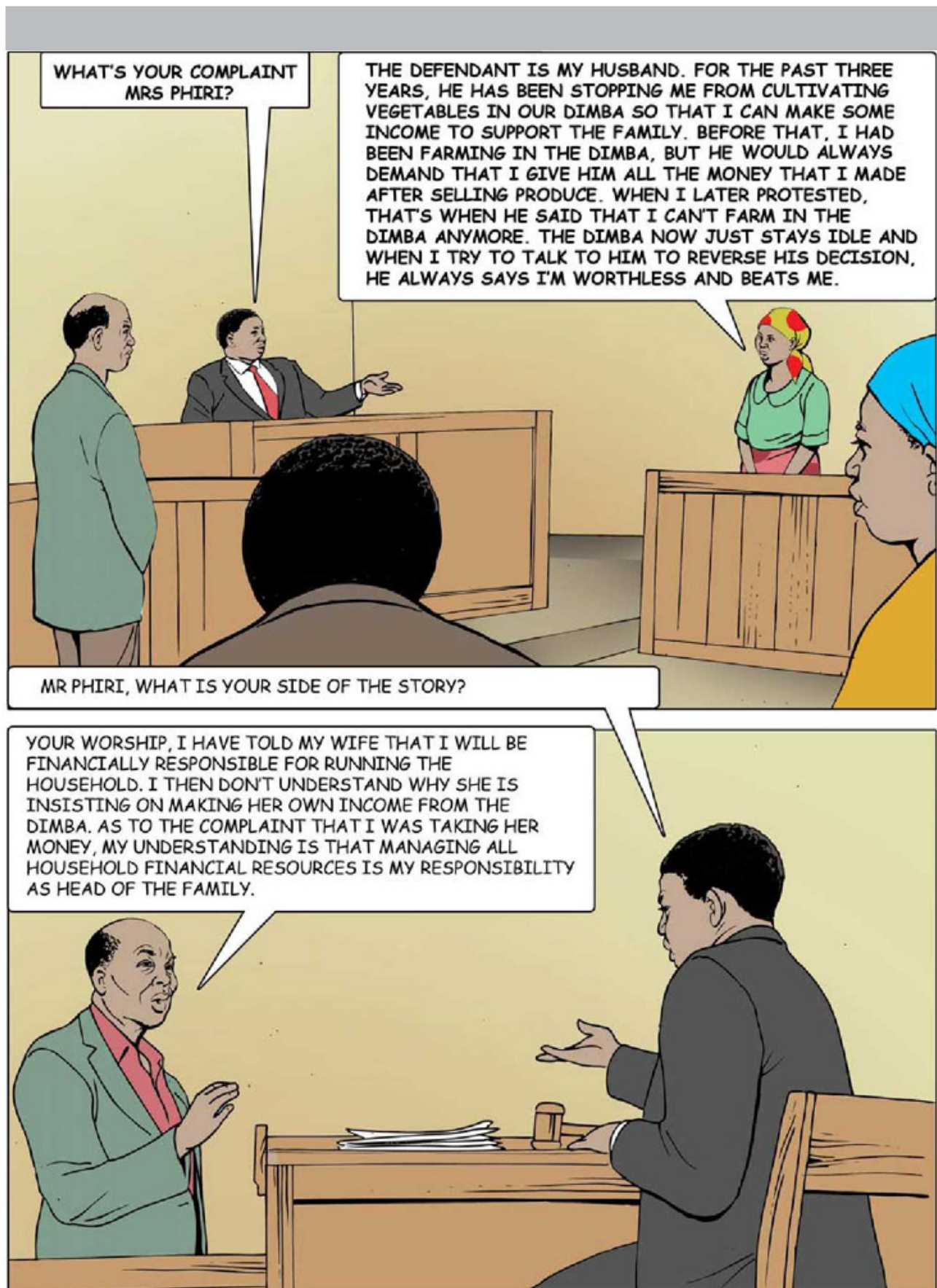
Time: 1 - 2 hours

Objective: To introduce the topic of land tenure insecurity by distinguishing the concepts of land 'access,' 'control' and ownership.'

Questions for discussions

- In what ways are the laws against sex discrimination flouted in land matters in this area?
- Why does this happen?
- Who are the major perpetrators?
- What do those who have encountered sex discrimination in land matters do?
- How can things be done differently in order to abide by the law?

Activity 4: *The connection between land related matters and the Prevention of Domestic Violence Act*





Judgement

Mr Phiri, you have violated the Prevention of Domestic Violence Act by committing economic abuse, financial abuse, psychological abuse and physical abuse.

- Firstly, your conduct amounts to **economic abuse** because you have deliberately limited your wife from accessing and/or controlling household land with abusive motives. This way, you have denied her the chance to lawfully earn income. Even when you were snatching from her the money she was making from the *dimba* before, that was economic abuse because you were depriving her of access to income that she has earned.
- Secondly, your conduct amounts to **financial abuse** because you are deliberately manipulating or limiting your wife's access to financial resources so that she can be financially dependent on you. The deliberate failure to provide for your household is also financial abuse.
- Thirdly, your conduct amounts to **emotional or psychological abuse** because you are making your wife emotionally and mentally distressed by limiting her wife's access to and/or control of household land, beating her up and using abusive language. We have also all heard that even your children are mentally distressed.
- Lastly, your conduct is amounting to **physical abuse** because not only are you beating your wife up, but she is also constantly afraid that she will be beaten if she dares to raise concerns about how your behaviour in limiting her access to and/or control of household land is having negative consequences.

I will therefore issue the following orders:

1. **Protection order:** requiring you Mr Phiri to immediately stop committing the acts of violence that your wife has complained of, or indeed any other acts of domestic violence. Under this order, you will also pay your wife compensation for the financial loss that she has suffered due to deprivation of the income generating opportunity through the *dimba*. Further, you will start providing for your family financially as necessary.
2. **Occupation order:** since your wife has demonstrated that she is fearful for her life, I think it is appropriate that you should be removed temporarily from your household. This is necessary to protect your wife and children. Effective today, don't stay in the house for a period of 60 days. Hopefully this will give you time to cool off and reflect on the behaviour that is expected of you from this judgement. I am told that you own the house where you and your family live, and that is why I am giving this occupation order. If you and your family were living in rented premises, I would have issued a tenancy order so that apart from requiring you to temporarily leave the house, your wife should become the legal tenant instead of yourself. I may even have ordered you to continue paying the house rent during the period when you are removed temporarily.

I so order.

Magistrate Jumani

The system of patriarchy promotes domestic violence and in the process discriminates against women in the ownership and control of land resources.

The right to own land and remain on one's land, and make use of and profit from that land in ways the individual or groups value it is often insecure for the rural poor, children and women. The system of patriarchy promotes sex discrimination since it discriminates against women in the ownership and control of land resources.

Time: 1-2 hours

Objective: To demonstrate how domestic violence violates women's land rights at household level.

Questions for discussions

- a) What acts of domestic violence (*nkhanza za m'banja*) do we witness in relation to land, as well as proceeds from land, in this community?
- b) Where do victims report? With what results?
- c) How can we decrease/eradicate incidents of domestic violence that are related to land?
- d) How can we effectively promote women's land rights as a means of addressing domestic violence?

Notes to help in discussing the topic

I. What does the law say about domestic violence?

- Malawi has the Prevention of Domestic Violence Act (2006), which recognizes that both women and men can be victims or perpetrators of domestic violence.
- Domestic violence is an act of physical, sexual, emotional/psychological, social, economic or financial abuse committed by a person against another person in any of the following relationships:
 - Husband or wife.
 - Parent or child.
 - A man and woman who have a child with each other.
 - A man and woman who have been in a dating relationship of not less than 12 months.

II. What are the legal solutions to domestic violence?

The orders that are granted under the Prevention of Domestic Violence Act have the potential to promote the right of women to access and/or control land when such rights are being violated through abusive conduct in a domestic relationship:

a) Protection order

- A victim of domestic violence can seek a protection order from the nearest court. This order requires the abuser to immediately stop committing specific acts of domestic violence. The court can also order an abuser to return a victim's property; to pay compensation to the victim for any loss or financial expense that is due to the domestic violence; and where necessary, to pay money for the support of the victim or any child/dependant.
- An application for a protection order can also be made on behalf of a victim by a parent of the victim, a sibling, a police officer, an enforcement officer (from the ministry responsible for gender) and a service provider (e.g. NGO).

b) Occupation order

- If the victim and abuser live in a house that is owned by both or one of them, a court can order the abuser to temporarily stop living in the house if this is necessary to protect the victim or any children. This order can be obtained together with a protection order.
- However, this order is not about changing the ownership of a house (say from the abuser to the victim). Issues regarding the distribution of property are dealt with if there are divorce proceedings (see Activity 5).

c) Tenancy order

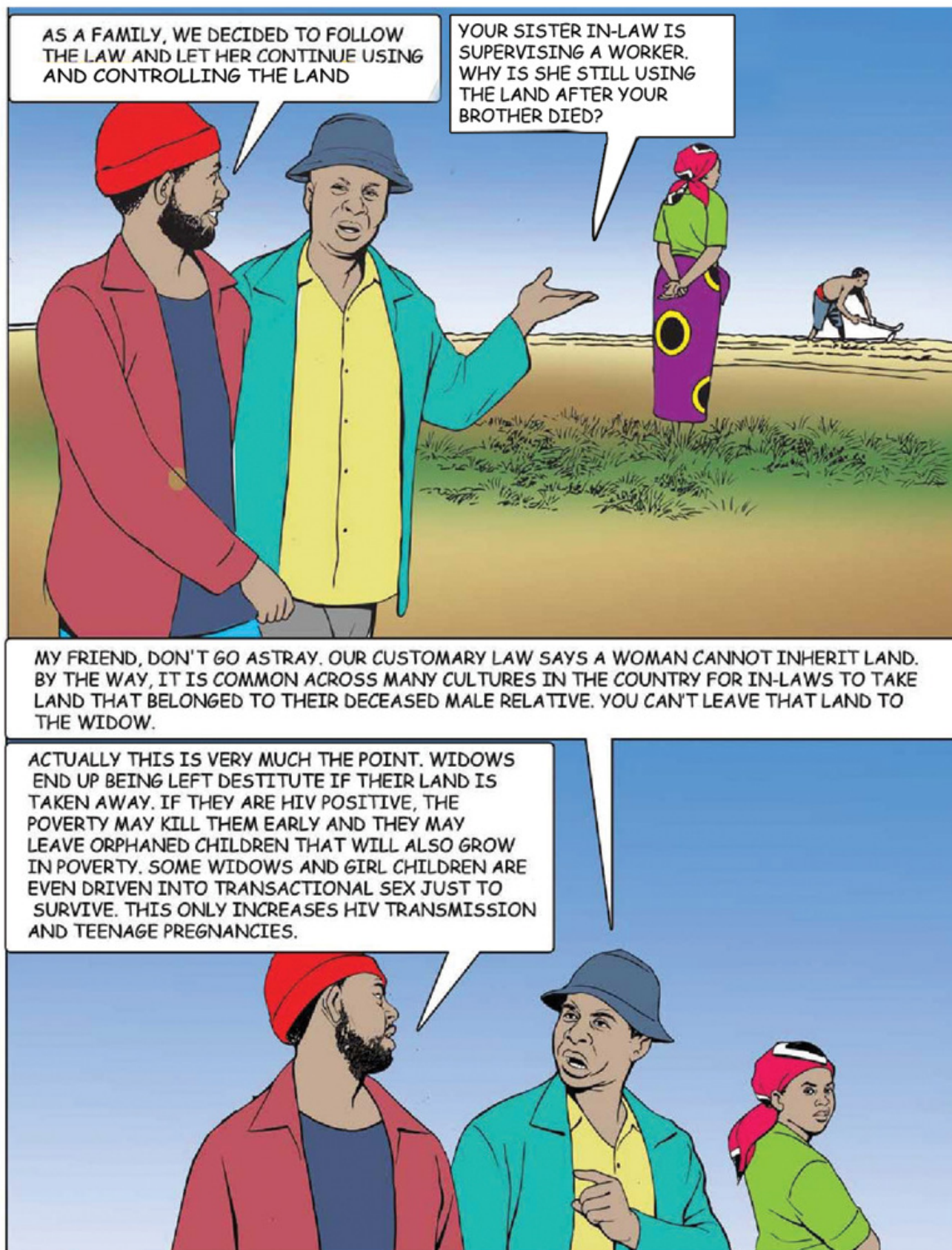
- If the victim and abuser live in a rented house, a court can order the abuser to temporarily stop living in the house if this is necessary for the protection of the victim or any children; and that the victim should become the legal tenant of the house (in place of the perpetrator).
- Where necessary, the abuser can be ordered to continue paying rent. This order can be obtained together with a protection order.

III. Where can one receive help in domestic violence matters?

Apart from courts where domestic violence cases are heard, the following institutions can offer help:

- Police Victim Support Units
- Community Victim Support Units
- One Stop Centres (available at some district and central hospitals)
- Human rights NGOs
- Legal Aid Bureau (which is supposed to have district offices)
- Malawi Human Rights Commission
- Chiefs (especially those that have formulated community bylaws to eradicate different harmful practices including domestic violence).

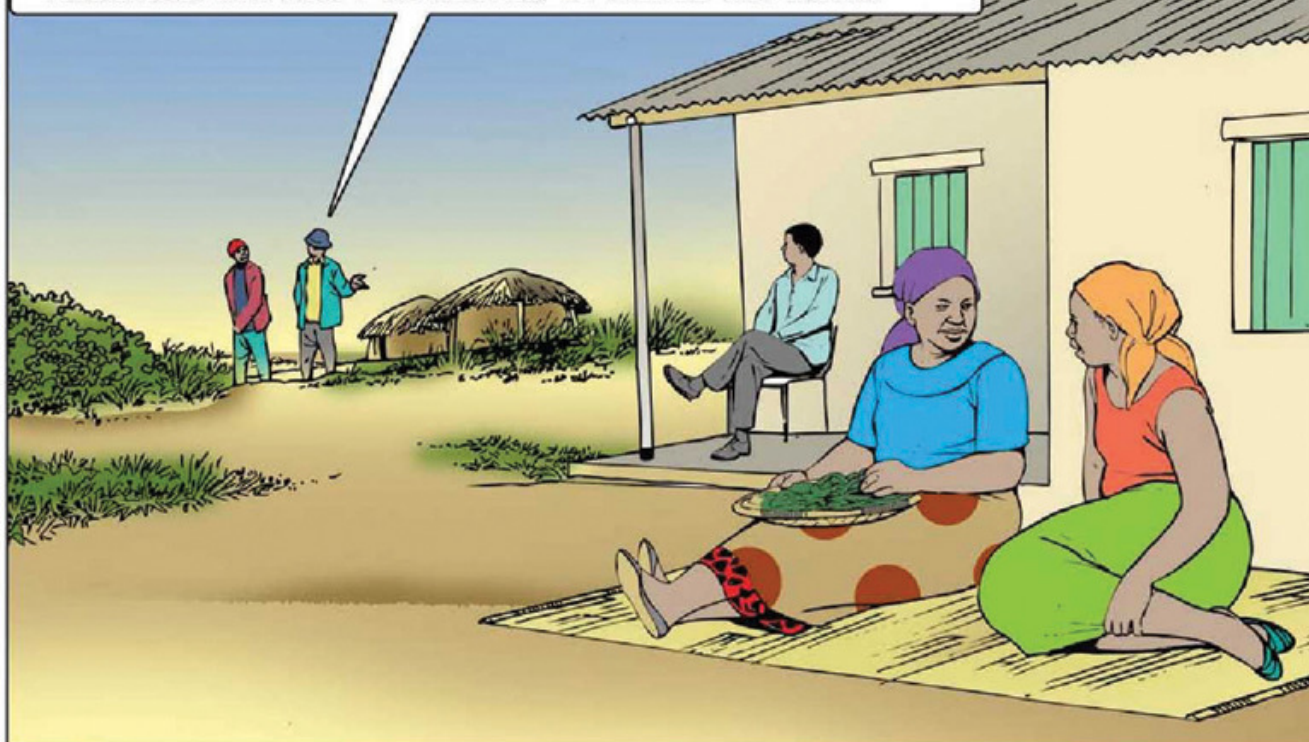
Activity 5: *How does land grabbing upon death perpetuate women's land tenure insecurity?*



BESIDES, MY FAMILY HAS HEARD THAT THE LAW IS THAT THAT IF YOU UNLAWFULLY TAKE A DECEASED PERSON'S PROPERTY, YOU CAN BE ARRESTED. WE DIDN'T WANT TO VIOLATE THE LAW THOUGH FRANKLY, I DON'T KNOW WHAT EXACTLY THIS LAW SAYS ABOUT LAND INHERITANCE.

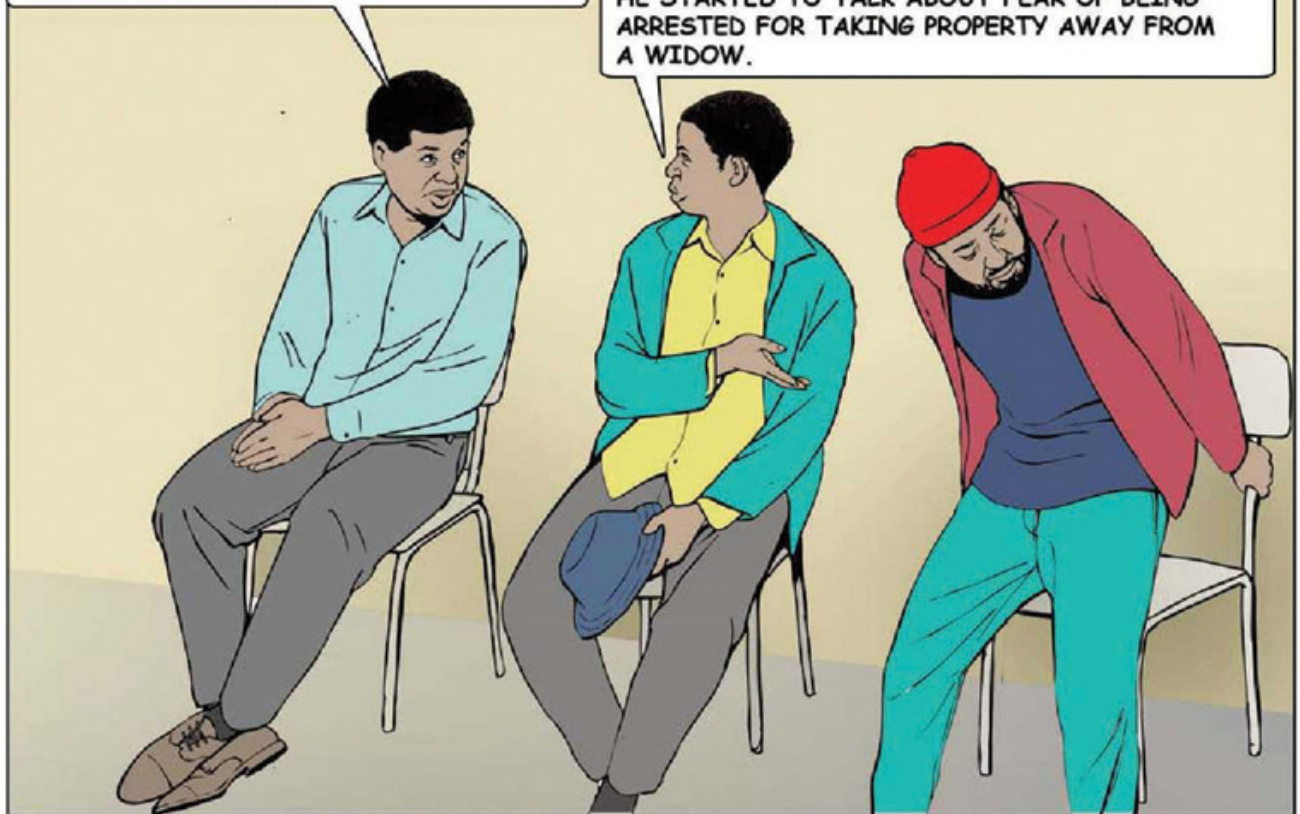


MY FRIEND, YOU WILL LOSE PROPERTY BECAUSE OF YOUR PITY AND FEAR. HOW DO YOU KNOW THAT THIS SO CALLED LAW IS EVEN TRUE AND CONCERNS US? HAVE YOU SEEN IT? LOOK, THERE IS THE PARALEGAL. WHY DON'T WE ASK HIM TO TELL US THE TRUTH?



GOOD AFTERNOON GENTLEMEN, SOME SIT DOWN. I WAS WATCHING YOU FROM A FAR AND YOU SEEMED TO BE IN A HEATED ARGUMENT...

I HAVE JUST LEARNT WITH SURPRISE FROM MY FRIEND HERE THAT AFTER HIS BROTHER DIED, THEY DECIDED THAT HIS WIDOW SHOULD CONTINUE USING THE LAND. THEN HE STARTED TO TALK ABOUT FEAR OF BEING ARRESTED FOR TAKING PROPERTY AWAY FROM A WIDOW.



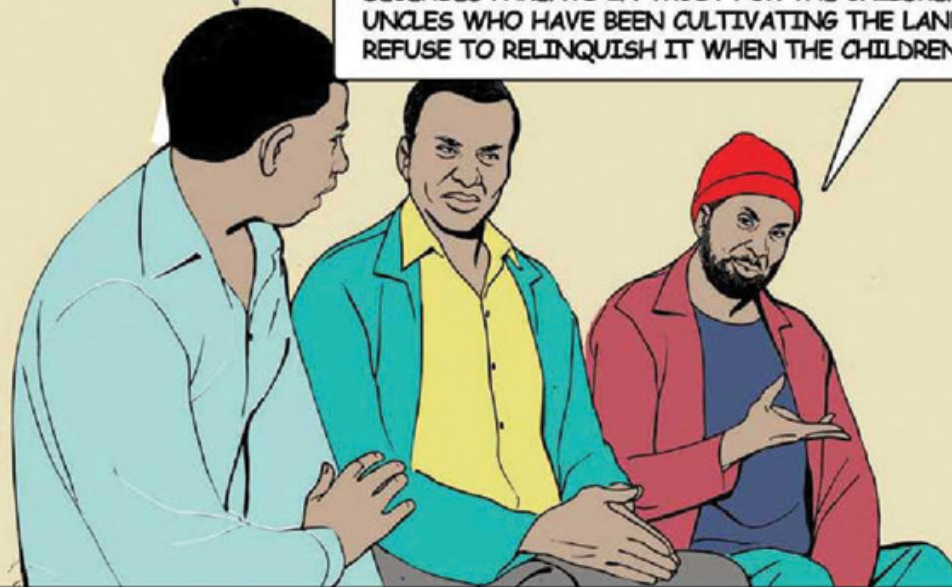
YES. THAT'S A VERY IMPORTANT LAW FOR ANYONE TO KNOW SINCE IT APPLIES TO EVERYONE IN MALAWI THE PRACTICE YOU WERE TALKING ABOUT IS CALLED PROPERTY GRABBING, AND IT IS PROHIBITED UNDER THE DECEASED ESTATES (WILLS, INHERITANCE AND PROTECTION) ACT. LAND OR PROPERTY GRABBING USUALLY OCCURS IF A PERSON HAS DIED WITHOUT LEAVING BEHIND A VALID WILL THAT CLEARLY SPECIFIES WHO SHOULD INHERIT HIS/HER PROPERTY AFTER DEATH.



BUT THE LAND WE USE HERE IS CUSTOMARY LAND, AND THEREFORE CLAN LAND. YOU CAN'T SAY THE DECEASED PERSON SPOUSE SHOULD INHERIT THIS LAND OR THE PROPERTY ON THIS LAND. IT IS LAND THAT HAS TO GO BACK TO THE CLAN. WHAT IF THE WIDOW REMARRIES? WON'T IT MEAN THAT THE LAND WILL BE UNDER THE CONTROL OF A 'FOREIGN' MAN FOR GOOD?

WITH THE NEW CUSTOMARY LAND ACT, PEOPLE WHO REGISTER THEIR PIECES OF CUSTOMARY LAND WILL HOLD TITLE TO THE LAND EITHER AS INDIVIDUALS OR JOINTLY AS FAMILY MEMBERS. THE INHERITANCE LAW SAYS THAT THE SURVIVING SPOUSE CAN INHERIT PROPERTY THAT IS ON CUSTOMARY LAND. HOWEVER, IF THE SURVIVING SPOUSE REMARRIES, THE TITLE OF SUCH PROPERTY SHOULD GO TO THE CHILDREN THAT THE SURVIVING SPOUSE HAD WITH THE DECEASED SPOUSE.

WHAT IF THE CHILDREN ARE TOO YOUNG TO BE GIVEN LAND? IN SOME TRADITIONS, IF BOTH PARENTS DIE WHILE THE ELDEST CHILD IS UNDER AGE, A FAMILY LEADER (E.G. AN UNCLE) HOLDS THE LAND OF THE DECEASED PARENTS IN TRUST FOR THE CHILDREN. HOWEVER, SOME UNCLES WHO HAVE BEEN CULTIVATING THE LAND FOR SOME YEARS REFUSE TO RELINQUISH IT WHEN THE CHILDREN ATTAIN ADULTHOOD.



THAT IS NOW PROPERTY GRABBING BECAUSE THE FAMILY LEADER HAS VIOLATED THE TRUST THAT WAS PLACED IN HIM. IN ANY CASE, WHILE THE CHILDREN ARE UNDER AGE, HE IS NOT SUPPOSED TO BE USING THE LAND FOR HIS OWN BENEFIT, BUT FOR LOOKING AFTER THE NEEDS OF THE CHILDREN.



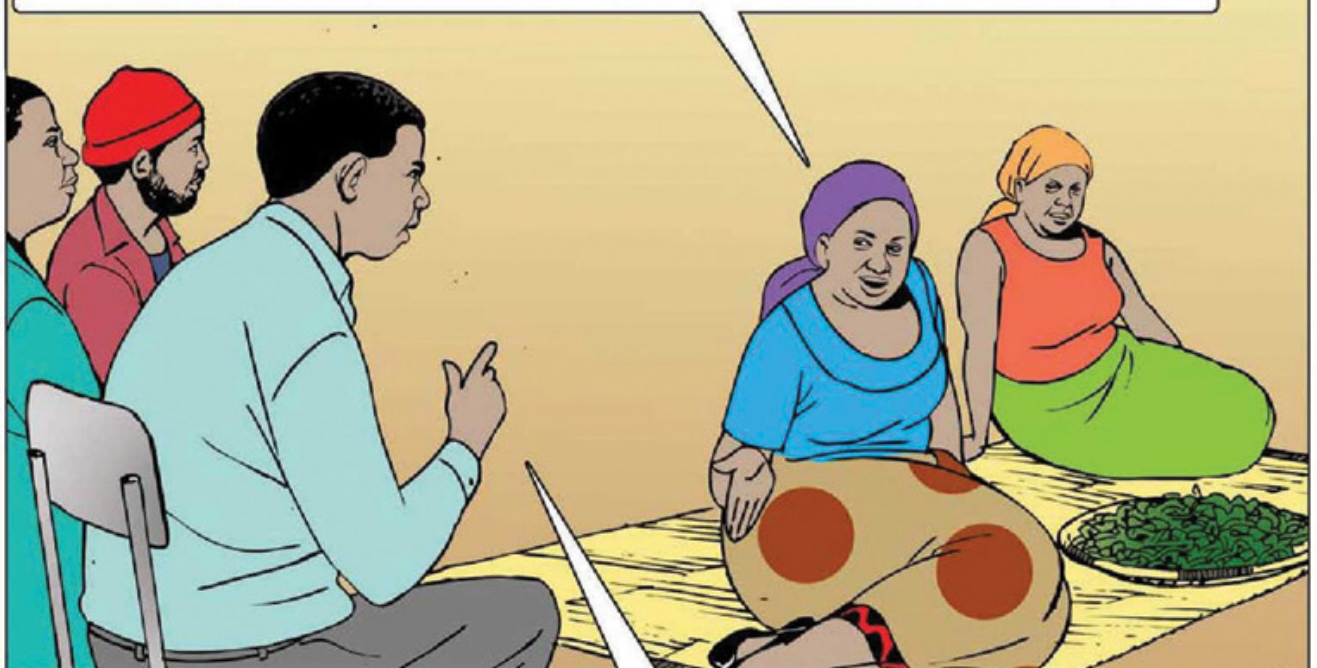
I KNOW WE HAVEN'T TAKEN MY BROTHER'S LAND FROM OUR IN-LAW. BUT I CAN'T HELP THINKING—EVEN WHERE THE LAND IN QUESTION IS NOT CUSTOMARY LAND, YOU WILL FIND THAT IT IS THE DECEASED MAN THAT EXCLUSIVELY INVESTED IN THE LAND SINCE THE WIFE MAY NOT HAVE BEEN WORKING. SO IS IT APPROPRIATE FOR THIS LAND TO GO TO HIS WIDOW AND NOT HIS RELATIVES?

MY BROTHER, SOMETIMES IT IS MISLEADING TO JUST CONCLUDE THAT A WIFE DID NOT MAKE ANY CONTRIBUTION. ALTHOUGH IT IS TALKING IN THE CONTEXT OF DIVORCE, THE MARRIAGE DIVORCE AND FAMILY RELATIONS ACT SAYS THAT BOTH DIRECT AND INDIRECT CONTRIBUTIONS MADE BY EITHER SPOUSE SHALL BE TAKEN INTO ACCOUNT IN DIVIDING PROPERTY BETWEEN THE COUPLE DURING MARRIAGE DISSOLUTION. EVEN WHERE THEY ARE NOT EARNING INCOME, WIVES USUALLY MAKE 'NON-MONETARY CONTRIBUTION.' THIS IS THE CONTRIBUTION THAT IS MADE BY A SPOUSE FOR THE MAINTENANCE, WELFARE OR ADVANCEMENT OF THE FAMILY OTHER THAN BY WAY OF MONEY. IT INCLUDES DOMESTIC WORK AND MANAGEMENT OF THE HOME, CHILD CARE, COMPANIONSHIP, THE ENDURANCE OF THE MARRIAGE AND ANY OTHER FORM OF CONTRIBUTION THAT THE COURT MAY CONSIDER APPROPRIATE.



BESIDES, WHERE A PERSON HAS DIED WITHOUT A LEAVING A VALID WILL, THE ONLY ONES THAT ARE ENTITLED TO INHERIT HIS PROPERTY BY LAW ARE THE SURVIVING SPOUSE AND CHILDREN (BOTH MALE AND FEMALE), ALONG WITH THE DECEASED PERSON'S PARENTS AND ANY DEPENDENTS BELOW 18 YEARS WHO WERE DEPENDING ON HIM/HER FOR SCHOOL FEES. THE DISTRICT COMMISSIONER'S OFFICE CAN GUIDE ON HOW THE PROPERTY SHOULD BE DISTRIBUTED BECAUSE THERE IS A PROCESS THAT SHOULD BE FOLLOWED FOR THE BENEFICIARIES TO DETERMINE THEIR SHARE OF THE PROPERTY.

YOU GENTLEMEN ARE DISCUSSING AN INTERESTING TOPIC. WHAT IF THE DECEASED PERSON HAD NO CHILDREN WITH THE SURVIVING SPOUSE? SHOULD THE SURVIVING SPOUSE STILL INHERIT THE LAND OR PROPERTY?



UNDER THE INHERITANCE LAW, A SURVIVING SPOUSE AND CHILDREN HAVE SEPARATE INHERITANCE RIGHTS. IF THERE ARE NO CHILDREN, IT MEANS THOSE WHO ARE LEGALLY ALLOWED TO INHERIT LAND OR PROPERTY ARE THE SURVIVING SPOUSE, ALONG WITH THE DECEASED PERSON'S PARENTS AND ANY DEPENDENTS BELOW 18 YEARS WHO WERE DEPENDING ON HIM/HER FOR SCHOOL FEES. THE DC'S OFFICE CAN GUIDE ON HOW THE PROPERTY SHOULD BE DISTRIBUTED.

I AM JUST CURIOUS ABOUT MY OWN SITUATION. I AM IN A POLYGAMOUS MARRIAGE—WE ARE TWO WIVES AND WE BOTH HAVE CHILDREN FROM OUR HUSBAND. HOW DOES THE DISTRIBUTION OF PROPERTY WORK IN SUCH CASES?



THE INHERITANCE LAW STATES THAT IF DECEASED PERSON DIED WITHOUT LEAVING A WILL, AND LEFT MORE THAN ONE WIFE AND EACH ONE OF THEM IS LIVING IN A DIFFERENT AREA, EACH WIFE AND THE CHILDREN THAT SHE HAD WITH THE DECEASED PERSON ARE ONLY ENTITLED TO THE SHARE OF THE PROPERTY OF THE DECEASED PERSON IN THEIR AREA. THIS MEANS A WIFE AND CHILDREN CANNOT CLAIM PROPERTY OF THE DECEASED PERSON THAT IS IN AN AREA WHERE ANOTHER WIFE LIVES. HOWEVER, THIS PROVISION DOES NOT APPLY TO SITUATIONS WHERE THE VALUE OF THE PROPERTY IS MORE THAN K1,000,000.00. SUCH PROPERTY WILL BE DISTRIBUTED ACCORDING TO THE LAW AND PROPER GUIDANCE MAY BE RECEIVED FROM THE DC'S OFFICE.

BUT WE BOTH LIVE IN THE SAME AREA!

IF THE DECEASED PERSON LEFT MORE THAN ONE WIFE AND THEY ALL LIVE IN THE SAME AREA, EACH SPOUSE AND THE CHILDREN THAT SHE HAS WITH THE DECEASED PERSON ARE ENTITLED TO A SHARE OF THE PROPERTY EQUAL TO THE CONTRIBUTION THAT THEY MADE TO THE PROPERTY. THE DC'S OFFICE CAN OFFER PROPER GUIDANCE ON HOW TO EFFECT SUCH DISTRIBUTION IN ORDER TO AVOID A SCENARIO OF PROPERTY GRABBING. HOWEVER, REMEMBER WHAT I SAID BEFORE, THAT NON-MONETARY CONTRIBUTION BY A SPOUSE IS ALSO COUNTED AS CONTRIBUTION.



HOW DOES THE LAW DEFINE PROPERTY GRABBING EXACTLY?

THE INHERITANCE LAW SAYS THAT PROPERTY GRABBING OCCURS IF A PERSON WHO IS NOT THE RIGHTFUL BENEFICIARY UNDER A WILL OR WHERE THERE IS NO WILL TAKES POSSESSION OF THE PROPERTY; GRABS IT; SEIZES IT; DIVERTS IT OR DEALS WITH IT IN ANY MANNER; DISPOSES OF IT; OR DOES ANYTHING TO THE PROPERTY WHICH RESULTS IN OR IS LIKELY TO RESULT IN ANY FORM OF HARDSHIP TO A PERSON WHO IS LEGALLY ENTITLED TO THE PROPERTY.

AND IS THERE ANY TRUTH IN THE TALK THAT ONE CAN EVEN BE ARRESTED FOR PROPERTY GRABBING?

PROPERTY GRABBING IS A CRIME. IF CONVICTED OF THE CRIME, THE GUILTY PERSON CAN BE ORDERED TO PAY A FINE OF NOT LESS THAN THE VALUE OF THE PROPERTY, AND TO GO TO PRISON FOR TEN (10) YEARS. HE/SHE CAN ALSO BE ORDERED TO IMMEDIATELY RETURN THE PROPERTY OR MONEY OF ITS VALUE TO THE PERSON(S) ENTITLED TO THE PROPERTY UNDER THE LAW.





YES, WRITING A WILL IS ONE WAY OF PREVENTING ONE'S SPOUSE AND CHILDREN FROM SUFFERING LAND/PROPERTY DISPOSSESSION. AS YOU CAN SEE FROM THIS SAMPLE, A WILL IS A WRITTEN DECLARATION OF HOW ONE WANTS HIS/HER PROPERTY TO BE DISTRIBUTED UPON HIS/HER DEATH. IT CAN BE WRITTEN BY ANYONE WHO HAS PROPERTY TO DISTRIBUTE, IS NOT MENTALLY DISTURBED, AND IS OVER THE AGE OF 18 YEARS. IT CAN BE IN ANY LANGUAGE AND FORMAT. IT SHOULD BE SIGNED BY THREE PEOPLE IN THE PRESENCE OF EACH OTHER, NAMELY—THE ONE WRITING THE WILL AND TWO WITNESSES (ALSO NOT MENTALLY DISTURBED AND OVER THE AGE OF 18 YEARS). THE WITNESSES SHOULD NOT BE BENEFICIARIES UNDER THE WILL).

A SAMPLE WILL

LAST WILL AND TESTAMENT OF AGNES KAUNDA

I, AGNES KAUNDA, OF P.O. BOX 2300, MZIMBA DECLARE THIS DOCUMENT TO BE MY LAST WILL AND TESTAMENT, WHICH I MAKE ON THE 18TH DAY OF MARCH, 2017.

1. I GIVE MY WIRELESS RADIO, TWO SINGLE BEDS, ONE HERD OF CATTLE AND FOUR GOATS TO MY SON DUMISANI KAUNDA, BORN ON 3RD JANUARY 1981.

2. I GIVE MY SEWING MACHINE, MOBILE PHONE, KITCHEN UTENSILS, ONE HERD OF CATTLE AND FOUR GOATS TO MY DAUGHTER CHIMWENWE KAUNDA, BORN ON 17 MARCH 1987.

3. I GIVE MY HOUSE IN MZIMBA TO MY HUSBAND, MR DALITSO KAUNDA, WHOM I MARRIED IN MARCH OF 1979.

4. I MAKE THE FOLLOWING CASH GIFTS FROM MY BANK SAVINGS TO THE PERSONS NAMED BELOW IN THE FOLLOWING AMOUNTS:

A) MY DAUGHTER, CHIMWENWE KAUNDA 35 PER CENT
 B) MY SON, DUMISANI KAUNDA 35 PER CENT
 C) MY HUSBAND, MR DALITSO KAUNDA 10 PER CENT
 D) MY MOTHER, MRS JOYCE CHILINGA 10 PER CENT
 E) MY FATHER, MR GRAY CHILINGA 10 PER CENT

5. I NOMINATE MY HUSBAND MR DALITSO KAUNDA, OF P.O. BOX 2300, MZIMBA TO BE RESPONSIBLE FOR MANAGING THE ADMINISTRATION OF THIS WILL.

SIGNED BY THE ABOVE NAMED

 AGNES KAUNDA

DATE: 18TH MARCH 2017.
 IN THE PRESENCE OF US BOTH BEING PRESENT AT THE SAME TIME:
 WITNESS: _____ DATE: 18TH MARCH, 2017.
 WITNESS: _____ DATE: 18TH MARCH, 2017.



Women and men have equal inheritance rights to land under the law.

Creations of certificates of occupancy or land use rights certificates, and allowing for the joint titling of land by men and women will make land ownership more secure among both male and female Malawians and help to address the challenge of land grabbing upon death.

Time: 2 - 3 hours

Objective: To demonstrate that land grabbing upon the death of a spouse is a further isolation of women's land rights.

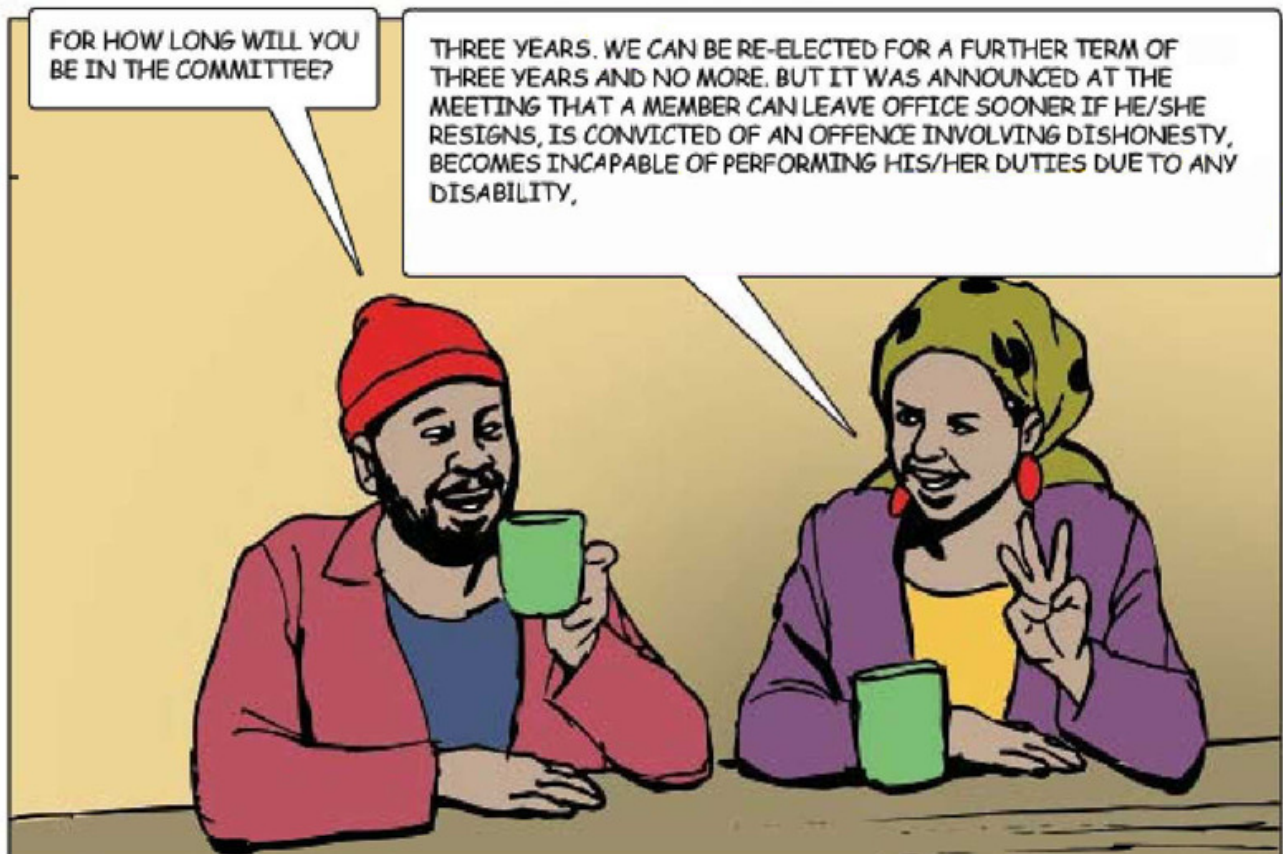
Questions for discussions

- Does any of the above (or similar practices) happen here?
- What consequences (why is it a good/bad thing?)
- Who are the main perpetrators?
- What channels exist to report property grabbing? Are they effective especially in land matters?
- What prevents victims of property grabbing from reporting?
- What can we do to prevent land grabbing after the death of a spouse/parents

Crimes of property grabbing should be reported to:

- District Commissioner's office
- Police Victim Support Units
- Community Victim Support Units
- Social Welfare Office
- Legal Aid Bureau
- Administrator General
- Chiefs
- Courts
- NGOs
- Community Action Groups or any other human rights groups that operate in many areas

Activity 6: How can women apply for a customary estate and obtain a certificate?



ONE MONTH LATER...

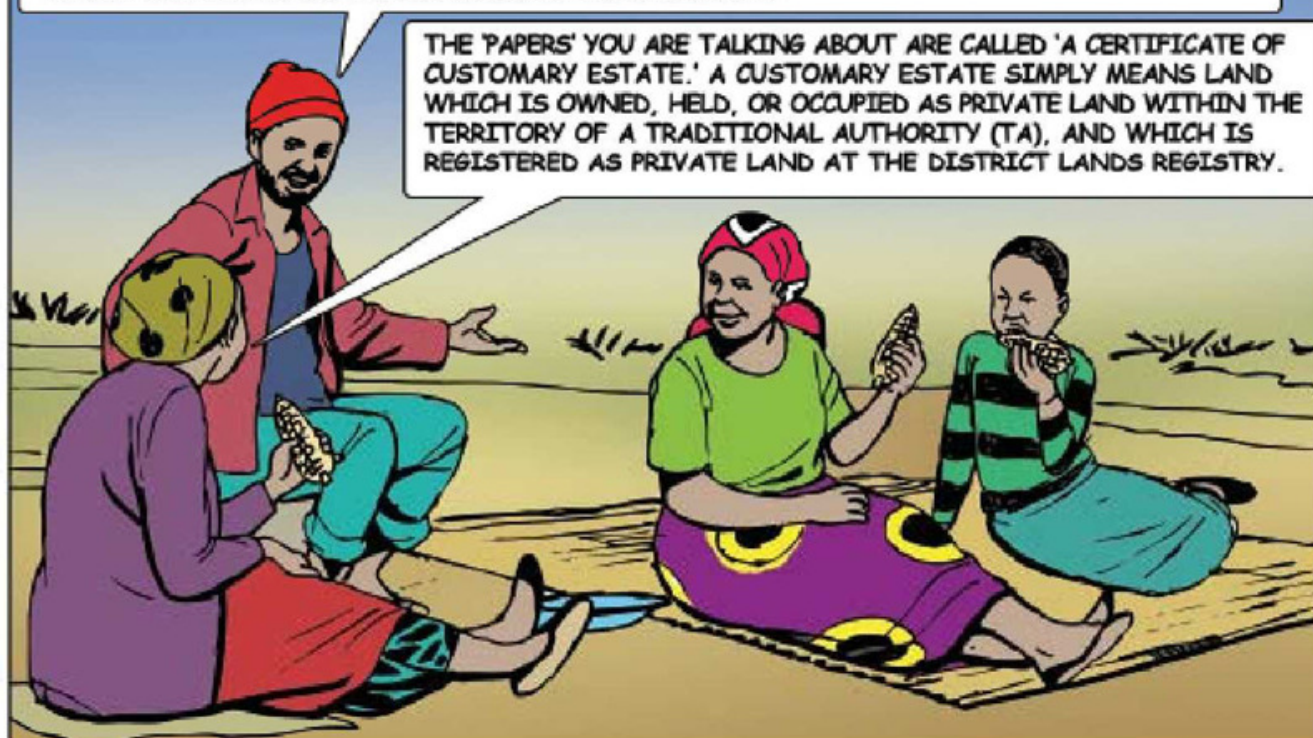
HOW ARE YOU ALL DOING? HOW IS FARMING?

EVERYTHING IS WELL. HOWEVER, I HAVE COME BECAUSE I CAN SEE THAT SOME PEOPLE WITHIN THE CLAN ARE NOT HAPPY THAT YOU HAVE LEFT ME TO CONTINUE USING THE LAND AFTER MY HUSBAND, YOUR BROTHER, DIED. I FEAR THAT ONE DAY WHEN YOU ARE GONE, THEY COULD EVICT ME AND THE CHILDREN. CAN YOU TALK TO THEM PLEASE?

THERE IS A BETTER WAY. AS YOU KNOW, MY WIFE IS NOW IN THE CUSTOMARY LAND COMMITTEE. SHE WAS SHARING WITH ME WHAT THEY LEARNT AT THEIR TRAINING—THAT PEOPLE CAN NOW HAVE CERTIFICATES TO SHOW THAT THEY LEGALLY OWN CUSTOMARY LAND. THIS COULD BE A GOOD WAY TO SECURE YOUR LAND FOR GOOD AND I WILL SUPPORT YOU. LET US CALL HER TO HEAR MORE.

HOW CAN MY IN LAW HERE APPLY FOR PAPERS SO THAT THE LAND THAT SHE HAS BEEN USING SINCE THE DEATH MY BROTHER CAN BE IN HER NAME?

THE 'PAPERS' YOU ARE TALKING ABOUT ARE CALLED 'A CERTIFICATE OF CUSTOMARY ESTATE.' A CUSTOMARY ESTATE SIMPLY MEANS LAND WHICH IS OWNED, HELD, OR OCCUPIED AS PRIVATE LAND WITHIN THE TERRITORY OF A TRADITIONAL AUTHORITY (TA), AND WHICH IS REGISTERED AS PRIVATE LAND AT THE DISTRICT LANDS REGISTRY.



CAN A WOMAN APPLY ON HER OWN?

YES, ANY ONE FROM THE COMMUNITY CAN APPLY TO THE CUSTOMARY LAND COMMITTEE. THE COMMITTEE WILL SEEK THE APPROVAL OF THE TA. FOR YOU, THERE IS AN OPTION OF APPLYING AS AN INDIVIDUAL OR AS A FAMILY UNIT.



I WOULD LIKE TO APPLY AS A FAMILY UNIT—ME AND ALL THE THREE CHILDREN.

THE LAW SAYS YOU WILL HAVE TO USE A SPECIFIC APPLICATION FORM THAT YOU WILL SIGN AND SUBMIT TO THE CUSTOMARY LAND COMMITTEE. IF YOU ARE APPLYING AS A FAMILY UNIT, AT LEAST TWO OF THE FAMILY MEMBERS WILL ALSO HAVE TO SIGN.



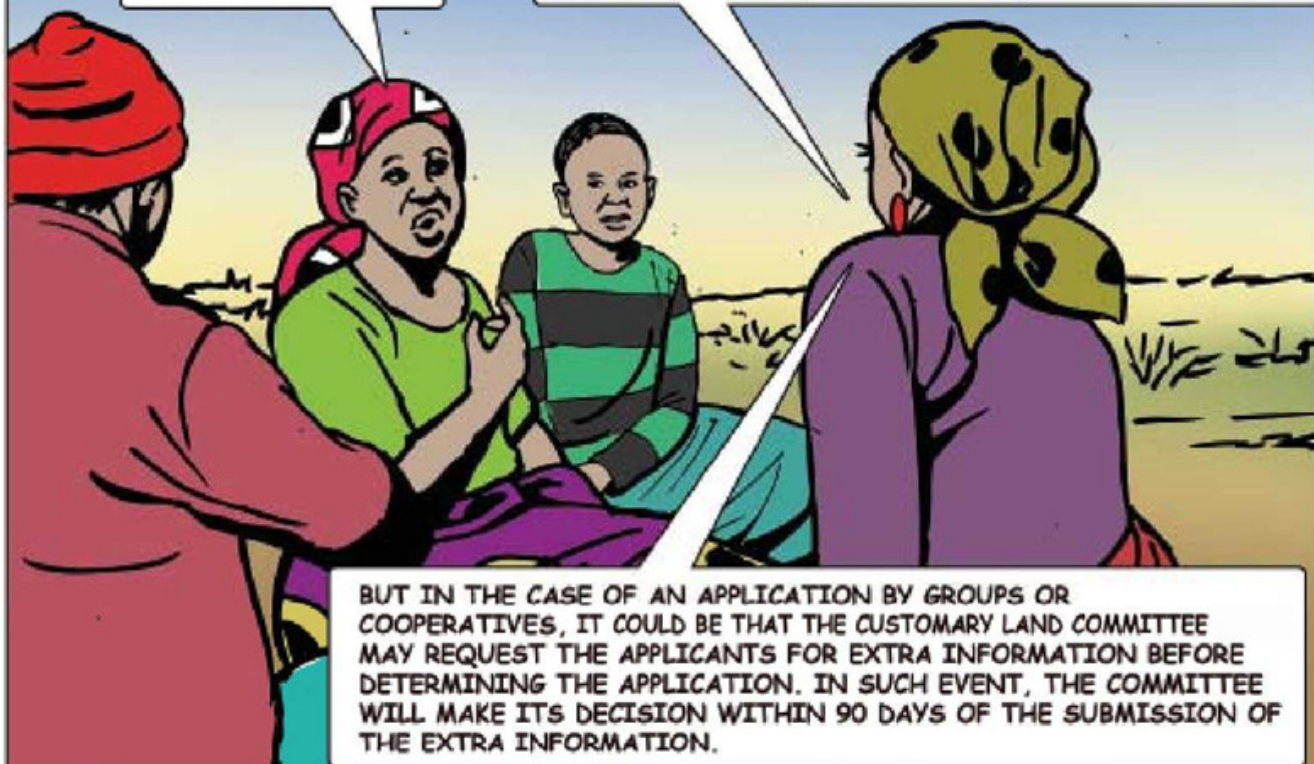
WAIT... THE PROCESS YOU ARE EXPLAINING WOULD APPLY TO EVEN GROUPS, RIGHT? I'M KEEN TO KNOW BECAUSE THE AGRIBUSINESS COOPERATIVE I BELONG TO WAS ALSO DISCUSSING ACQUIRING LAND AS A GROUP.



YES IT APPLIES TO GROUPS AS WELL. IN THE CASE OF AN ASSOCIATION OR A COOPERATIVE, THEN AT LEAST TWO AUTHORISED OFFICERS SHOULD SIGN THE APPLICATION. SOMETIMES, IT CAN BE THAT THOSE WHO WANT TO APPLY ARE MERELY A GROUP OF PERSONS RECOGNISED UNDER CUSTOMARY LAW—FOR EXAMPLE A GROUP OF WOMEN, YOUNG PEOPLE, OR MEN PURSUING A CERTAIN CAUSE. IN SUCH CASES, AT LEAST TWO PEOPLE THAT ARE RECOGNISED AS ELDERS OR LEADERS OF THE GROUP SHOULD SIGN.

WHAT DOES IT TAKE TO PROCESS THE APPLICATION?

ONCE THE CUSTOMARY LAND COMMITTEE RECEIVES AN APPLICATION, IT IS SUPPOSED TO MAKE A DECISION WITHIN 90 DAYS (THREE MONTHS).



BUT IN THE CASE OF AN APPLICATION BY GROUPS OR COOPERATIVES, IT COULD BE THAT THE CUSTOMARY LAND COMMITTEE MAY REQUEST THE APPLICANTS FOR EXTRA INFORMATION BEFORE DETERMINING THE APPLICATION. IN SUCH EVENT, THE COMMITTEE WILL MAKE ITS DECISION WITHIN 90 DAYS OF THE SUBMISSION OF THE EXTRA INFORMATION.

SO DOES THE CUSTOMARY LAND COMMITTEE CALL YOU TO A HEARING OR MEETING TO INFORM YOU OF THE DECISION?

AND DO YOU GET THE CERTIFICATE YOU TALKED ABOUT ONCE THE DECISION HAS BEEN MADE?



NO, THE CUSTOMARY LAND COMMITTEE WILL SEND OR DELIVER TO YOU AS AN APPLICANT AN OFFER IN WRITING, SIGNED BY THE CHAIRPERSON AND THE LAND CLERK OF THE COMMITTEE. THE OFFER WILL ALSO CONTAIN TERMS AND CONDITIONS FOR YOU TO ADHERE TO IN UTILISING THE LAND. ONCE YOU GET THE OFFER, YOU WILL BE EXPECTED TO ACCEPT OR REFUSE THE OFFER WITHIN 21 DAYS BY SIGNING OR THUMB PRINTING A FORM.

IT IS ONLY WHEN YOU HAVE ACCEPTED THE OFFER THAT THE CUSTOMARY LAND COMMITTEE WILL ISSUE YOU WITH A CERTIFICATE KNOWN AS 'A CERTIFICATE OF CUSTOMARY ESTATE'. THIS CERTIFICATE WILL BE SIGNED BY THE CUSTOMARY LAND COMMITTEE CHAIRPERSON AND CLERK AND YOURSELF AS THE PERSON THAT HAS BEEN GRANTED THE LAND. THE DISTRICT LAND REGISTRAR WILL ALSO HAVE TO SIGN IT, PUT A SEAL ON IT AND REGISTER IT IN THE GOVERNMENT REGISTRY

CHECKLIST FOR A VALID CERTIFICATE OF A CUSTOMARY ESTATE

FOR YOU TO KNOW THAT YOU HAVE RECEIVED A VALID CERTIFICATE OF CUSTOMARY ESTATE FROM THE LAND COMMITTEE, CHECK IF YOUR CERTIFICATE HAS:

- ✓ SIGNATURES OF THE CUSTOMARY LAND COMMITTEE CHAIRPERSON AND CLERK.
- ✓ YOUR SIGNATURE, AS THE PERSON THAT HAS BEEN GRANTED THE LAND.
- ✓ THE SIGNATURE OF OF THE DISTRICT LAND REGISTRAR IN THE DISTRICT WHERE THE LAND IS SITUATED.
- ✓ THE SEAL OF THE DISTRICT LAND REGISTRAR.

FOR THE FIRST REGISTRATION, YOU WILL NOT PAY ANYTHING. HOWEVER, IF YOU MAKE ANY SUBSEQUENT TRANSACTIONS ON THE LAND (FOR EXAMPLE IF YOU WANT TO USE THE LAND AS LOAN COLLATERAL OR TRANSFER THE LAND TO SOMEONE) THEN YOU WILL BE REQUIRED TO PAY APPROPRIATE FEES, E.G. FOR STAMP DUTY.

SO IS THERE A CHANCE THAT SOMETIMES THE CUSTOMARY LAND COMMITTEE CAN REFUSE AN APPLICATION?



YES, BUT IN SUCH A CASE, THE CUSTOMARY LAND COMMITTEE HAS TO GIVE THE APPLICANT REASONS FOR THE REFUSAL.

DOES MY MOTHER STAND A CHANCE THEN? ISN'T THERE A DANGER THAT APPLICATIONS FROM WOMEN CAN JUST BE REFUSED BECAUSE OF THE INFLUENCE OF NEGATIVE CULTURAL BELIEFS AND PRACTICES?



NO. THE CUSTOMARY LAND ACT IS CLEAR ON THIS MATTER. IN MAKING ITS DECISION, THE CUSTOMARY LAND COMMITTEE IS REQUIRED NOT TO TREAT APPLICATIONS FROM A WOMAN, OR GROUP OF WOMEN, PERSON WITH DISABILITY, OR GROUP OF PERSONS WITH DISABILITY LESS FAVOURABLY THAN A SIMILAR APPLICATION FROM A MAN OR GROUP OF MEN OR MIXED GROUP OF WOMEN AND MEN. FURTHERMORE, THE COMMITTEE IS INSTRUCTED NOT TO ADOPT OR APPLY ANY DISCRIMINATORY PRACTICES OR ATTITUDES TOWARDS ANY PERSON WHO HAS APPLIED FOR A CUSTOMARY ESTATE. BESIDES, THE FACT THAT THERE IS A MANDATORY PRESENCE OF NOT LESS THAN THREE WOMEN AMONGST THE SIX COMMITTEE MEMBERS IS A MOVE AIMED AT ENSURING THAT WOMEN'S INTERESTS WILL BE PROTECTED TOO.



All land that is registered and has a title deed is considered secure land while that which does not have a title deed is insecure.

The law provides an opportunity for men and women in the local community to seek permission from the traditional authority of their area, through the customary land committee, to register their land for private ownership to ensure security of tenure.

Time: 2 hours

Objective: To illustrate how the registration of customary land under the Customary Land Act can be affected.

Questions for discussions

- a. What challenges do the most vulnerable members of society and women have in securing land?
- b. What benefits can be associated with the ownership of land by vulnerable members of society and women?
- c. What challenges can be associated with the ownership of land by vulnerable members of society and women? How can such challenges be overcome?
- d. What steps should be put in place to ensure that many women act on the opportunity provided by the law to register land for private ownership?

Notes to help in discussing the topic

The new Customary Land Act acknowledges that because customary land is owned communally this comprises land tenure security, especially to the most vulnerable members of society and women. Therefore, as part of customary land reform, the law has created Traditional Land Management Areas. A Traditional Land Management Area is an area that will be demarcated and registered as falling within the territory of a Traditional Authority (TA). Each TA will have a certificate of customary land for his or her Traditional Land Management Area.

The law also provides for the establishment of customary land committees in each Group Village Headman (GVH) area. The customary land committee, chaired by GVH will be responsible for the management of all customary land in a Traditional Land Management Area on trust for the benefit of residents of the area. Apart from GVH, the committee shall have six other members elected by and from within the community. There shall not be less than three women in the committee.

A land committee shall not allocate land or grant customary estate without the approval of the responsible TA, and the TA should not unreasonably withhold such approval.

A customary estate means land that has been registered as private land within the territory of the TA.

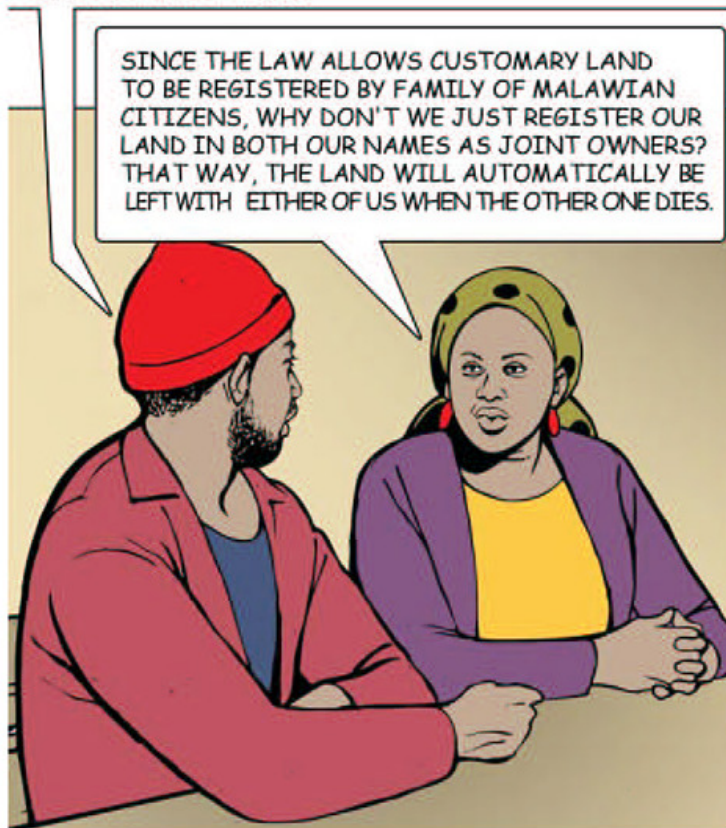
A customary estate will have to be registered at district level through an office called the District Land Registry. A person who has acquired a customary estate will be given a certificate. She/he will have the land without a time limit, and the land can be inherited and transferred by Will.

Activity 7: Applying for joint ownership of land

YOU KNOW MY DEAR, I AM LEARNING A LESSON FROM THE SITUATION OF MY LATE BROTHERS' WIDOW. I THINK THAT WE SHOULD REGISTER OUR CUSTOMARY LAND IN YOUR NAME SO THAT EVEN IF I DIE, YOU WILL HAVE SECURE LAND AND NO ONE WILL BOTHER YOU.



I HEARD YOU EXPLAIN TO MY IN-LAW THAT REGISTERED CUSTOMARY LAND CAN BE TRANSFERRED BY WILL. YOU CAN JUST WRITE A WILL THEN, AND LEAVE THE LAND TO ME. I KNOW SOME OF MY RELATIVES WILL THINK I'M CRAZY, BUT I DON'T MIND SINCE I AM DOING THE RIGHT THING. BESIDES, YOU ALREADY HAVE THE MAIN RESPONSIBILITY FOR THE LAND SINCE I'M USUALLY BUSY WITH OTHER THINGS.



APART FROM DEATH SITUATIONS (SEE ACTIVITY 5) WOMEN MAY ALSO SUFFER LAND DISPOSSESSION UPON DIVORCE. THIS MAINLY HAPPENS IF THE TITLE DEED ONLY CARRIES THE HUSBAND'S NAME. HOWEVER, THE MARRIAGE, DIVORCE AND FAMILY RELATIONS ACT PROVIDES THAT A COURT SHALL EQUITABLY DIVIDE AND RE-ALLOCATE PROPERTY UPON THE DISSOLUTION OF A MARRIAGE TAKING INTO ACCOUNT:

- THE INCOME OF EACH SPOUSE;
- THE ASSETS TO EACH SPOUSE;
- THE FINANCIAL NEEDS OF EACH SPOUSE;
- THE OBLIGATIONS OF EACH SPOUSE;
- THE STANDARDS OF LIVING OF THE FAMILY DURING THE SUBSISTENCE OF THE MARRIAGE;
- THE AGE AND HEALTH OF EACH SPOUSE; OR
- THE DIRECT/INDIRECT CONTRIBUTIONS MADE BY EITHER SPOUSE

NON-MONETARY CONTRIBUTION MEANS THE CONTRIBUTION MADE BY SPOUSE FOR THE MAINTENANCE, WELFARE OR ADVANCEMENT OF THE FAMILY OTHER THAN BY WAY OF MONEY, AND INCLUDES DOMESTIC WORK AND MANAGEMENT OF THE HOME, CHILD CARE, COMPANIONSHIP, THE ENDURANCE OF THE MARRIAGE AND ANY OTHER FORM OF CONTRIBUTION THAT THE COURT MAY CONSIDER APPROPRIATE.

THAT SOUNDS LIKE A BETTER WAY. I HAVE HEARD OF HUSBANDS WHO ONLY WANT TO REGISTER LAND IN THEIR NAME BECAUSE THEY ARE THE HEAD OF HOUSEHOLD. BUT THAT IS WRONG, A MARRIAGE IS ABOUT EQUAL PARTNERSHIP.



THE PROBLEM IS THAT OUR CULTURE PROMOTES THE PERCEPTION THAT MEN ARE USUALLY THE ONES THAT OWN THE 'BIG ITEMS' IN A HOUSEHOLD. LOOK AT WHAT HAPPENED TO MY SISTER IN TOWN—THEY AGREED AS A FAMILY THAT THE HUSBAND WOULD TAKE A LOAN TO BUY LAND. FOR THE HUSBAND TO AFFORD TO PAY FOR THE MORTGAGE, THEIR UNDERSTANDING WAS THAT MY SISTER WOULD TAKE FULL FINANCIAL RESPONSIBILITY FOR EVERYDAY HOUSEHOLD NEEDS. SHE LEFT HER HUSBAND TO PROCESS THE WHOLE TRANSACTION AND THE HUSBAND JUST REGISTERED HIMSELF ON THE TITLE DEED DESPITE THAT THE LAND COULDN'T HAVE BEEN BOUGHT HAD SHE NOT FULLY TAKEN OVER HOUSEHOLD RESPONSIBILITIES.

THAT'S NOT FAIR. MEN SHOULD LEARN THAT JUST BECAUSE THEY ARE NORMALLY ENTRUSTED TO PROCESS TRANSACTIONS, IT DOESN'T MEAN THAT THEY SHOULD ABUSE THE RESPONSIBILITY AND DISADVANTAGE THEIR WIVES. THIS IS WHY FOR THIS NEW CUSTOMARY LAND ACT, WOMEN ALSO HAVE TO TAKE AN INTEREST TO KNOW THE PROCESSES THAT ARE INVOLVED IN REGISTERING CUSTOMARY LAND AND NOT JUST LEAVE EVERYTHING TO THEIR HUSBANDS. LUCKILY YOU ALREADY KNOW MORE THAN I DO SINCE YOU ARE IN THE CUSTOMARY LAND COMMITTEE.



OUR CONVERSATION IS TELLING ME THAT PROBABLY MOST WOMEN DON'T KNOW THEIR RIGHTS. SOME MAY MISTAKENLY THINK THAT THEY ARE RESPECTING A HUSBAND AS HEAD OF HOUSEHOLD BY ALLOWING THE CERTIFICATE OF CUSTOMARY ESTATE TO CARRY HIS NAME ONLY. WE NEED TO RAISE ENOUGH AWARENESS ABOUT THE BENEFITS OF JOINT LAND OWNERSHIP AND JOINT DECISION MAKING OVER LAND. I'M LUCKY TO HAVE A MAN LIKE YOU.



Allowing for the joint titling of land by men and women will make land ownership more secure among Malawians.

Time: 1-2 hours

Objective: To promote joint registration of customary land amongst married couples.

Questions for discussions

- What is the general perception towards joint ownership/registration of land in the area?
- What are the fears? What are the opportunities/advantages?
- How can joint titling be strengthened?
- How can women start working being actively involved in the registration process?

Further idea for role play: Since joint ownership is not just for couples, encourage participants to play out another scenario involving joint ownership by family members.

Notes to help in discussing the topic

The Customary Land Act provides that the customary land committee shall allocate a customary estate to:

- A citizen of Malawi.
- A group of two or more citizens of Malawi
- A partnership or corporate body if the majority of its members or shareholders are citizens of Malawi.

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20. Decisions of a Customary Land Tribunal (Regulations 48, 51 & 58)

- The Customary Land Tribunal shall award costs¹¹ to the witnesses and any other person who deserves to be awarded costs.
- Each Tribunal shall prepare and keep a register containing, with regard to any dispute referred before it, the following particulars:

- ✓ The date of dispute;
- ✓ The dispute's serial number;
- ✓ The name and physical address of the complainant;
- ✓ The name and physical address of the respondent;
- ✓ The nature of claim and relief sought;
- ✓ The name of each member of the tribunal;
- ✓ The final determination of the dispute; and
- ✓ The date of the final determination.

A party who wants appeal a decision of the Customary Land Tribunal to the District Land Tribunal shall pay a fee of MK5,000.00. A party appealing from the District Land Tribunal to the Central Land Board shall pay a fee of MK10,000¹²

¹¹ Costs can include fees, charges, disbursements, expenses etc.

¹² See the Second Schedule to the Customary Land Regulations as read with Regulations 59 and 72 respectively.

19. Hearing of disputes by the Customary Land Tribunal (Regulations 45, 46, 47, 49 & 57)

- Proceedings of the Customary Land Tribunal shall be open to the public.
- The Tribunal shall set down for the hearing of a dispute within 30 days of an admission or receipt of a response to a dispute. *The Tribunal shall hear and determine any dispute within a period of 60 days from the date the dispute is registered.*
- The Customary Land Tribunal shall serve the notice of hearing (see *Form E, inside*) on all persons under a dispute and shall facilitate for an agreement to be reached by the parties. But if the parties fail to reach the agreement the Tribunal shall determine the dispute in accordance with law and custom after hearing the parties to the dispute and any witness(es). Witnesses shall be called testify using the following summons:

FORM H	
WITNESS SUMMONS	
(regulations 49 and 62)	
Customary Land Dispute No.....of 20.....	
BETWEEN	
Complainant.....	AND
Respondent.....	
To:	
.....	
You are HEREBY REQUIRED PERSONALLY to appear before the	
Land Tribunal/Board* the.....day of,	
20.....at o'clock in the.....noon or soon	
thereafter and to bring with you any documents or persons connected	
with the above dispute, and so from day to day until your presence is	
dispensed with by the Tribunal/Board.	
Given under my hand on the..... day of, 20.....	
Chairperson of Tribunal/Board*.....	
<i>*delete whichever is inapplicable</i>	

18. Processing of disputes by a Customary Land Tribunal (Regulations 42, 43 & 44)

- Each Customary Land Tribunal shall maintain a register of disputes and the disputes shall be numbered consecutively in each year according to the order/time in which they are submitted by complainants.
- Upon registering a dispute, the Customary Land Tribunal shall send (serve) a copy of the application for the determination of a dispute to the person against whom the dispute is made.
- A person who is served the notice of the dispute (unless he/she admits the dispute), shall, within 14 days after being notified, submit a response to the tribunal using the Form below:

FORM 6

RESPONSE TO APPLICATION FOR DETERMINATION OF A DISPUTE

(regulation 44)

Customary Land Dispute No.f 20.....

BETWEEN

..... Complainant

AND

.....Respondent

To: The Land Clerk/Registrar/Commissioner*

I,....., the Respondent in this dispute deny the

allegations as outlined in Form F and state as follows:

.....

.....

.....

I HEREBY DECLARE that the above information is true to the best of my

knowledge and belief.

.....

Signature of Respondent

*delete whichever is inapplicable

Note: Should the space provided under any particular item be insufficient for the information, a separate sheet with the item numbers clearly marked and signed by the complainant may be attached.

The application for a case to be handled by the Customary Land Tribunal shall contain specific particulars¹⁰ and shall be made using the following Form:

FORM F

APPLICATION FOR DETERMINATION OF A DISPUTE
(regulation 40)

Customary Land Dispute No.....of 20.....

BETWEEN

Complainant.....

AND

Respondent.....

To: The Land clerk/ Land Registrar/Commissioner*
I hereby apply to theCustomary Land Committee/
Customary Land Tribunal/District Land Tribunal*..... District
Registry to lodge a dispute-

1. Particulars of Complainant:

a) Full Names (in BLOCK LETTERS)

b) Postal Address

c) Residential Address

d) Nationality

.....ID No.

2. Particulars of Respondent:

a) Full Names (in BLOCK LETTERS)

b) Postal Address

c) Residential Address

d) Nationality

.....ID No.

3. Description of Land Subject of Dispute:

a) Locality

b) Unique Parcel Number

c) Size of land in hectares

d) Nature of ownership

I HEREBY DECLARE that the above information is true to the best of my
knowledge and belief

.....

Signature of Complainant

Note: Should the space provided under any particular item be insufficient for the information,
a separate sheet with the item numbers clearly marked and signed by the complainant be attached.

* Delete whichever is inapplicable

A land clerk shall keep a Land Record for each committee comprising every plot of land that has been registered, and every customary estate or customary estate lease, if any, which has been granted.

16. Maintaining a Customary Land Register (Regulation 35)

- This grant is made subject to the conditions that:
- a) The occupier shall use, keep and maintain the land in good state, and, in the case of land to be used for farming, farm the land in accordance with the practice of good land husbandry ordinarily used in the area;
 - b) No building shall be erected until all required permissions have been obtained;
 - c) The occupier shall pay any applicable rent, fees, charges, taxes and other requirements, if applicable, in respect of the occupation of the land;
 - d) The occupier shall comply with all rules, including by-laws applicable to the land and all lawful orders and directions given by a land committee relating to the use and occupation of the land;
 - e) The occupier will retain and keep safe all boundary marks, whether natural or otherwise; and
 - f) The Commissioner and a land committee representative may enter and inspect whether the conditions under which a customary estate is granted are being complied with.

[Back]

FORM D

CERTIFICATE OF A CUSTOMARY ESTATE
(Section 23(5) and 27, and regulation 33)

Adjudication Section..... Title No.....
This is to CERTIFY thatis/are now granted
a customary estate over the land at Unique Parcel Number.....
The following conditions apply to this customary estate:

.....
Signature of Grantee

.....
Chairperson

.....
Customary Land Committee

.....
Registry this.....day of, 20.....

.....
District Land Registrar

14. Accepting an offer for a customary estate (Regulations 31, 32 & 34)

An applicant is expected to accept the offer within 21 days by signing or thumb printing this Form:

FORM C

ACCEPTANCE OF OFFER OF CUSTOMARY ESTATE

(Section 23(2) and regulation 33)

To: The Chairperson (Name the committee)

I/WE, A.B., ACCEPT the OFFER of a customary estate the Committee made to me on the day of 20... over land at Unique Parcel Number

I/WE ACCEPT the OFFER with the conditions set out in the OFFER.

Dated the.....day of 20.....

Applicant(s)

15. Issuing a Certificate of Customary Estate (Regulation 33)

When the land committee receives an applicant's acceptance of the offer of a customary estate, it shall issue the applicant, upon the payment of a fee of K1,000.00, the following Certificate of Customary Estate signed by the person(s) being granted the customary estate, chairperson of the land committee, land clerk and District Land Registrar.

Anyone who violates the conditions of their customary estate shall pay a fine of K10,000.00.⁹

- 13. Communication about the refusal or offer of a customary estate (Regulations 31, 32 & 34)**
- Additional to the considerations listed under section 22 of the Customary Land Act (see Activity 4), in deciding whether to grant a customary estate, a committee shall also consider the following factors:
 - ✓ Whether there is another person, other than the applicant, who has rights to the land;
 - ✓ Whether the land is available for the use proposed by the applicant;
 - ✓ Whether the land size applied for and its location are suitable for the proposed use; and
 - ✓ What other customary estates the applicant holds in the area.
 - Where a committee is satisfied that an applicant does not meet the conditions for being granted a customary estate⁸, it shall, in writing, refuse to grant the applicant the customary estate by giving reasons.
 - If an applicant satisfies the conditions for being granted a customary estate, the committee shall make an offer to the applicant (within 90 days of receiving the application) using this Form:

FORM B

OFFER OF CUSTOMARY ESTATE

(Section 23(2) and regulation 33)

To:

.....

Your Application made the.....day of, 20... for the GRANT of a customary estate over land at Unique Parcel Number.....has been considered by the Committee. We now OFFER you a customary estate over land at Unique Parcel Number.....

The OFFER of the customary estate is made under the following conditions:

.....

.....

.....

Dated theday of, 20.....

.....

.....

Chairperson

Land Clerk

NOTE: This offer must be accepted within twenty-one days.

12. Applying for a customary estate (Regulation 30)

- A person or group of persons (applicant) can proceed with registering a customary estate (obtaining a certificate/legal 'papers' for land) once the process of adjudication of their land and plot(s) is completed.
- Such applicant is required to pay an application fee of MK1,000.00, fill the following Form and submit it to the land committee:

FORM A

APPLICATION FOR A CUSTOMARY ESTATE

(Section 23 and regulation 30 (2))

1. Full name and address of applicant in BLOCK LETTERS: In the case of a partnership registered under the Business Registration Act, a company incorporated under the Companies Act, a trust incorporated under the Trustees Incorporation Act or a co-operative society incorporated under the Co-operative Societies Act, the name and residential addresses of all partners, members, directors and trustees must be given.

2. Marital status of the Applicant.....

3. Names of children and their ages (if any).....

4. If married, are you applying jointly with a spouse or as a family?

5. Particulars of registration under the Business Registration Act, the Companies Act, The Trustees Incorporation Act or the Co-operative Societies Act (if applicable)

6. Nationality of applicant:ID No.....

7. Particulars of freehold, leasehold property or customary estate already held in Malawi (State plot number or description, Deed or instrument number, use of property and whether or not developed)

8. Purpose for which land is required

9. Particulars of land
a) Place in which land is situated.....
b) Size of land in hectares.....
c) Unique parcel number.....

Dated this.....day of....., 20.....

Signature of Applicant.....

⁷ See the Second Schedule to the Customary Land Regulations.

FORM E

NOTICE OF HEARING
(Regulations 39, 45 and 60)

Customary Land Dispute No.....of 20.....

BETWEEN

.....Complainant

AND

.....Respondent

To:

TAKE NOTICE that the determination of your dispute has been
set down for theday of20... ato'clock
in the.....noon or soon thereafter as the dispute can be
heard at

If no appearance is made on your behalf or by yourself, the
dispute will be heard and decided in your absence.
Given under my hand on the.....day
of.....,20.....
Mediator/Chairperson of Tribunal/Board*

**delete whichever is inapplicable*

- When a land committee receives such a dispute, it shall appoint a person who is not a member of the committee to mediate between the parties. To be appointed, the mediator has to satisfy membership criteria for choosing committee members-see Box 1. In resolving a dispute, the mediator appointed shall follow the guiding principles outlined in the Customary Land Act⁶ (see Activity 6).
- For all disputes, the land committee, in liaison with the mediator, shall serve the following notice of hearing on all persons mentioned in a dispute and if a party is not satisfied with the results of the mediation, he/she shall pay the sum of K2,000.00⁶ in order to lodge a dispute to a Customary Land Tribunal for the area in which the land is situated.

- ## 11. The process of inspecting or checking the preliminary adjudication and demarcation record and hearing disputes by the land committee (Regulations 26, 27, 28, 36, 37, 38, 39 & 40)
- A land clerk shall give 14 days notice for interested persons to come and inspect/ check the adjudication register so that they can make objections or corrections where necessary. *This notice shall be posted in prominent places in the area.*
 - From the date that the 14 days notice expire, the land clerk shall keep the adjudication record open for inspection for a period of 60 days.
 - If any person has objections or corrections or feels wronged by a decision or conduct of a land committee, he/she may lodge a dispute with the committee whether orally or in writing. *Where a dispute has been lodged with the committee orally, a land clerk shall record it in writing.*

- Make provision for witnesses to be present during the recording of claims to confirm the validity of the claims and provide any evidence or proof to support the claims;
 - Safeguard the interests of persons that are absent, women, minors, the elderly and persons with disabilities;
 - Hear any dispute or objection that may arise during the recording of land claims and record the plot as "disputed" for referral to the Customary Land Tribunal;
 - Ensure all claims are heard and that no claim is to be excluded by those compiling records of land claims (field recorders);
 - Provide a unique plot number that can be linked to claimant; and
 - Present the final field records to the land committee for checking and confirmation.
- Once confirmed, the final field records shall form the *preliminary* adjudication and demarcation record register that interested persons can come to inspect/ check before the records are finalized.
- The final demarcation and adjudication record is produced when all disputes (if any) are resolved. Thereafter, the record, together with the (land) maps for the area shall form the customary land register.
- ## 11. The process of inspecting or checking the preliminary adjudication and demarcation record and hearing disputes by the land committee (Regulations 26, 27, 28, 36, 37, 38, 39 & 40)

- A land clerk shall, in liaison with the land committee, carry out the verification of boundaries of traditional land management areas using such maps.
- ## 7. Preparation of base maps and land use maps (Regulation 22)

- A land clerk shall prepare a base map and a land use plan for each traditional land management area and group village area.² *The base maps and land use plans shall be used for purposes of preparing for the adjudication process.*
- The base map and land use plan shall highlight the key natural resources that may require protection and management frameworks such as wetlands, fragile lands, hazardous lands and existing infrastructure and services.

8. Notice of adjudication and demarcation (Regulation 23)

- Not less than 7 days before the demarcation of an adjudication area starts, a land clerk shall use his/her best judgment to ensure that the persons who will be affected by the demarcation and recording of land have appropriate knowledge.
- In so doing he/she shall issue a notice (posted in prominent places in the area so that as many persons as possible see the information) of: *the intended demarcation; the recording of claims; and the time and place at which the demarcation will commence.*

9. Making land claims during adjudication (Regulation 24)

Any person, body or organization with an interest in land within an adjudication area shall make a claim to a land clerk, and point out his or its boundaries to the land clerk.

10. Role of the land clerk during adjudication and demarcation (Regulations 25 & 29)

In liaison with a committee, the land clerk shall:

- Verify the boundaries of plots of land and the claims that are being made to such land in the presence of persons who may be affected by the verification;
- Map the boundaries of land plots using an image or a mobile device;
- Set aside land or demarcate rights of way³ as necessary;
- In accordance with customary law provide to claimants⁴ advice and guidance on any questions about land plot boundaries and land claims;

² The maps shall be prepared in accordance with instructions from the Surveyor General and the Commissioner for Physical Planning as per the Land Survey Act, 2016 and the Physical Planning Act, 2016.

³ A specific route through grounds or property belonging to another where pedestrians, vehicles etc can pass.

4. Holding land committee meetings (Regulations 12, 13, 14, 15 & 16)

- A committee shall hold a meeting at least once in a month. The chairperson shall convene meetings of the committee.
- A land clerk shall issue a written notice of every meeting of a committee to each member at least 7 days before the date of the meeting.
- Where necessary, the chairperson shall, if requested in writing by at least three members, convene a special meeting of the committee to handle only the matter(s) specified in the request within 14 days of the request being made.

- When present, the chairperson shall preside at (chair) every meeting of the committee. In his/her absence, the committee members present shall elect amongst themselves a person to chair the meeting. Such person shall have all powers of the chairperson during the meeting.

- A committee meeting shall take place if four members, *including the chairperson or the person chairing the meeting and at least two women*, are present.

- Unless a decision is undisputed, a decision on any matter before a committee shall be by a majority of the votes of the members present. In case there is a tie in the votes, the chairperson or person chairing the meeting shall cast a veto to break the tie.

- A land clerk shall record and maintain minutes of all the meetings of a committee.

5. Conducting public sensitization of the adjudication and demarcation of customary land (Regulation 17)

- The land committee shall undertake community sensitization meetings about: the advantages and benefits of, as well as issues to be considered pertaining to land use planning, demarcation, survey, registration and proper administration and management of customary land.
- In conducting such meetings, the committee shall rely on information provided by the Commissioner for Lands, the Commissioner for Physical Planning or the Surveyor General.

6. Preparation of district maps and boundary verification (Regulation 19, 20 & 21)

- The District Land Registrar shall oversee the adjudication, demarcation of boundaries and preparation of maps in a district.
- The District Land Registrar shall print a district's maps showing traditional land management areas and group villages, and these shall be used for verifying the boundaries of the areas.

2. Co-opting other members into a customary land committee (Regulation 8)

- A land committee is allowed to co-opt not more than three members (at least one of whom should be a woman) to attend a meeting of the committee based on their expertise. *However, such 'expert' should fulfill the usual criteria that is applied when electing a committee member in Box 1.*
- The co-opted member (s) can join discussions during the meeting of the committee, but cannot vote.

3. Functions of a land committee (Regulation 11)

- The land committee shall perform the following functions:
- Clarifying all rights of occupation and use of customary land by land users in their GVH area;
- Ensuring that all other categories of land and their respective boundaries in the GVH area are clear and known;
- Adjudicating customary land rights either periodically or systematically for purposes of registration of land;
- Processing applications for and making grants of customary estates subject to the consent of the Traditional Authority;
- Prescribing amounts of land that can be allocated to an individual, a family, group of persons, or an organization;
- Liaising with and consult institutions and bodies within their territory whose activities and mandates affect land use, water, forestry, mining, agriculture, and development planning;
- In consultation with the Commissioner for Lands, imposing any fees or charges on customary estates granted to organizations or bodies, or annual rent on customary estate leases granted or sub-leased to organizations or bodies;
- Inspect and verify whether the conditions subject to which a customary estate is granted are being complied with;
- Approving any transactions on customary estates within the first five years of registration;
- Carrying out public outreach campaigns on any matter concerning the Customary Land Act; and
- Recommending to a local government authority the appointment of any staff it may need to carry out its duties and responsibilities.

1. Things that a land clerk should facilitate when customary land committee members are being nominated and elected (Regulations 4, 7, 9 & 10)

The land clerk should:

- Issue a notice to the Group Village Headperson (GVH) requesting for the list of all persons who are at least 18 years old and are ordinarily resident in the GVH's area.

- Call for nominations of names of people (who meet the qualifications in Box 1) who should be considered for election to the land committee. Those who can nominate and vote for a candidate for appointment to a committee should be: a citizen of Malawi; at least 18 years of age; resident within the area; and registered in the GVH register for the poll.
- Receive the nominations of the people to be considered for election to the land committee at least 21 days before the election day.
- On the day of the elections, first introduce all candidates to the voters, and then let the voters vote for a candidate by casting their ballots in secret.

But when there is only need to fill a vacancy in the customary land committee, the land clerk shall issue a notice for people to nominate those who should contest in an election to fill the vacancy. Apart from the factors mentioned in Activity 1, a vacancy shall arise due to the factors mentioned in Box 1.

At all times, the land clerk and the community/voters should be mindful of the requirement that at least three of the six committee members should be women.¹

Box 1: Choosing land committee members and filling vacancies	
Qualifications of land committee members (Regulation 5)	
A person will qualify to be elected into a land committee if he/she is:	–
A citizen of Malawi;	–
Ordinarily resident in the GVH's area;	–
At least 18 years of age;	–
Not a Member of Parliament (MP);	–
Not a ward councillor;	–
Not a judicial officer;	–
Not a public officer;	–
Not a person holding a political party office;	–
Not a mentally unfit person; and	–
Not one who has been convicted of an offence involving dishonesty or moral turpitude.	–
Additional criteria for a vacancy to arise in a land committee (Regulation 6):	
Incapacity to perform one's duties because of any disability;	–
Being declared bankrupt;	–
Being elected a ward councillor;	–
Being elected an MP; or	–
Being convicted of an offence involving dishonesty or moral turpitude.	–

¹As per section 5(2)(b) of the Customary Land Act.

ANNEXURE

CUSTOMARY LAND REGULATIONS

Details on handling the administration
and management of customary land as
outlined in the Customary Land
Regulations, 2018

Complaints against decisions related to customary estates

The Customary Land Act has created three tiers of handling disputes concerning customary land in case anyone who is occupying or has an interest in a customary estate has a complaint against a decision that has been made by a land committee or the Commissioner for Lands:

- **The customary land tribunal:** will exist in each Traditional Land Management Area to handle disputes concerning land in the area. The tribunal shall consist of the TA (chairperson) and six members of the community (at least three of whom shall be women) appointed by the TA with the approval of the Commissioner for Lands.

- **District land tribunal:** A person who is not happy with the decision of the customary land tribunal can appeal to the district land tribunal, which shall be in every district. It will be chaired by the District Commissioner (chairperson), and people who come from and reside in the district (two of whom shall be women). Members shall be appointed by the local government authority responsible for the district.

- **Central Land Board:** If still unsatisfied, an aggrieved person can appeal to the Central Land Board, which will consist of a Resident Magistrate (chairperson), three TAs (one from each region of Malawi, and one of whom shall be a woman), and two other reputable members in society, one of whom shall be a woman. The Central Land Board shall be appointed by the Commissioner for Lands with the approval of the Minister.

The following persons will be ineligible to serve in tribunals

Ineligibility criteria	Customary land tribunal	District land tribunal
a) A member of a land committee	X	X
b) A person who doesn't ordinarily reside in the relevant Traditional Land Management Area	X	X
c) A Member of Parliament	X	X
d) A ward councillor	X	X
e) A magistrate	X	X
f) A public officer	X	Not applicable
g) A holder of a political party office	X	X
h) A person below 18 years	X	X
i) A mentally unfit person	X	X
j) A person convicted of a criminal offence involving dishonesty/moral turpitude	X	X
k) A non-Malawian	X	X

The following persons shall be disqualified from serving on the Central Land Board:

- An undischarged bankrupt;
- Those convicted of an offence under the Customary Land Act;
- Those who in the three years prior to their appointment have been convicted of any offence and sentenced to a term of imprisonment;
- Those who in the seven years prior to their appointment have been convicted of an offence involving dishonesty or fraud.

Time: 2 hours

Objective: To disseminate the knowledge that:

- i) that members of the immediate family are prioritised to get land that is being surrendered by a person.
- ii) that customary estates can be productive for rural masses and should be protected from careless disposal.
- iii) the mandate for handling land related complaints lies with the structures that have been established under the Customary Land Act.

Questions for discussions

Surrendering land

- 1) What factors would make people to surrender land in the community?
- 2) How can malicious surrender of land be detected and prevented?
- 3) What are the benefits of offering surrendered land to a spouse first before all others?

Selling land

- 1) What are the disadvantages of selling our land? What impact can land disposal have on the development of indigenous members of the community?
- 2) What can factors can influence (a) men and (b) women to sell their land? How can we mitigate against such factors?
- 3) How can we ensure that family members do not exert undue influence over each other to sell land?
- 4) How can we ensure that we make money from the land's productivity instead of selling it?

Notes to help in discussing the topic

Surrender of land

The Customary Land Act provides that a person, family unit, or group of persons that is holding customary land can surrender the land to the customary land committee. However, the customary land committee will not regard the surrender as valid if it can be reasonably deduced that the surrender is just being done to:

- Prevent a woman from occupying land which she would have been entitled to occupy had it not been surrendered;
- Fraudulently, dishonestly or unjustly deprive dependents who are below 18 years of the land.

Where land has been validly surrendered, the customary land committee will take the initiative to first offer the land to several people in order of priority:

If the person that has surrendered the land is a man:

- His wife;
- Where he has more than one wife, his wives in order of seniority;
- Where there is no wife or all wives have declined the offer, any of his children over the age of 18 years;
- Where all the above have declined the offer, any of his other dependents.

If the person that has surrendered the land is a woman:

- Her husband;
- Where the woman has no husband, is divorced or the husband has declined, any of her children over the age of 18 years;
- Where all the above have declined the offer, any of her dependants.

If a customary estate has to be sold, ensure that:

- a) The land being sold is within clearly marked boundaries.
- b) There are no standing debts attached to the land.
- c) The consent of the customary land committee and TA has been obtained if the sale is happening within 5 years after obtaining the title deed for the land.
- d) If the land is owned by a family unit, that all registered owners of the land have given their consent.



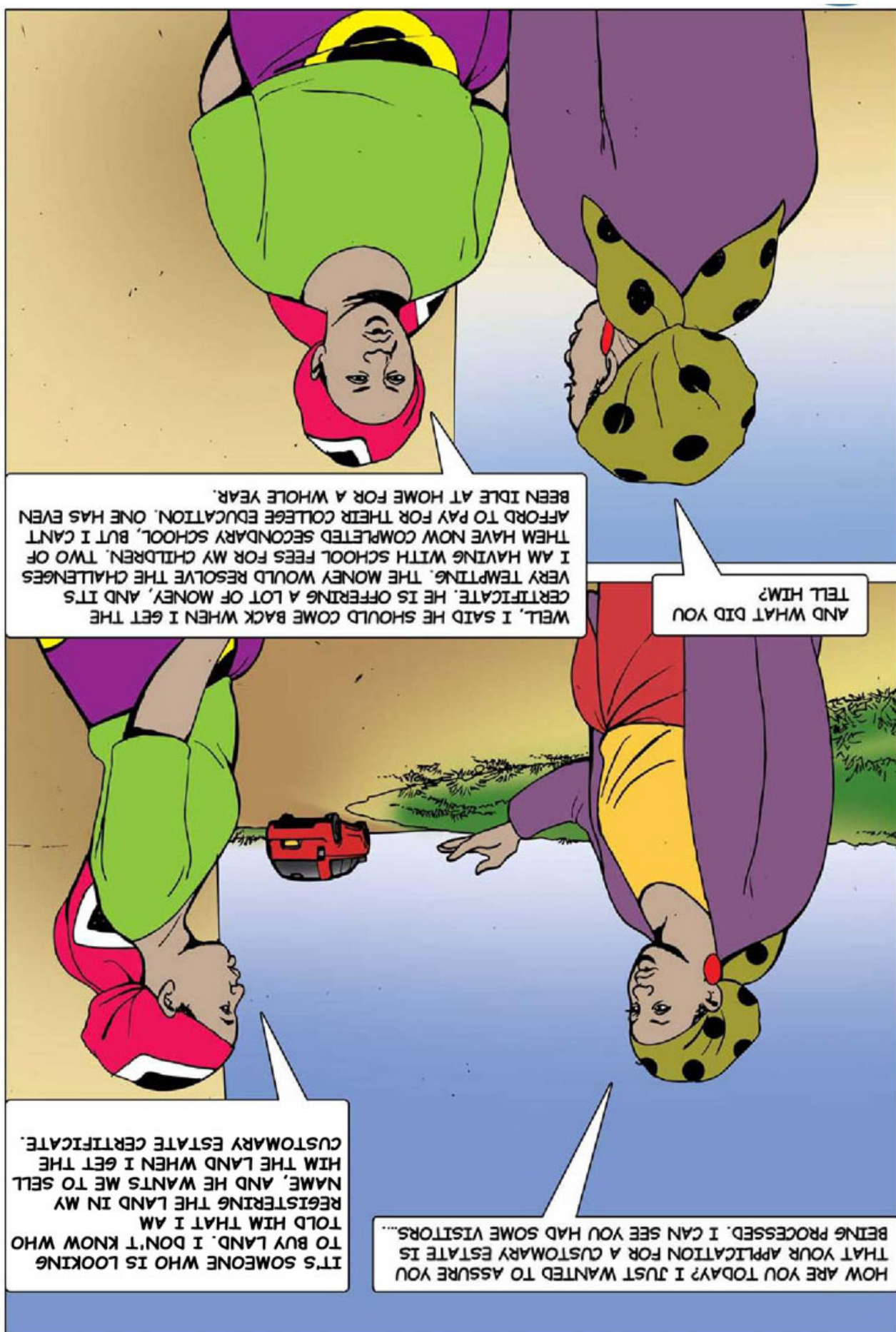
THE COMMITTEE IS SUPPOSED TO ACT FAIRLY. THE CUSTOMARY LAND ACT EVEN PROVIDES THAT IF ANYONE WHO IS OCCUPYING OR HAS AN INTEREST IN A CUSTOMARY ESTATE HAS A COMPLAINT AGAINST A LAND COMMITTEE'S DECISION, SHE/HHE CAN APPLY TO THE CUSTOMARY LAND TRIBUNAL TO REVIEW THE DECISION. THE CUSTOMARY LAND TRIBUNAL WILL EXIST IN EACH TRADITIONAL LAND MANAGEMENT AREA TO HANDLE DISPUTES CONCERNING LAND IN THE AREA.

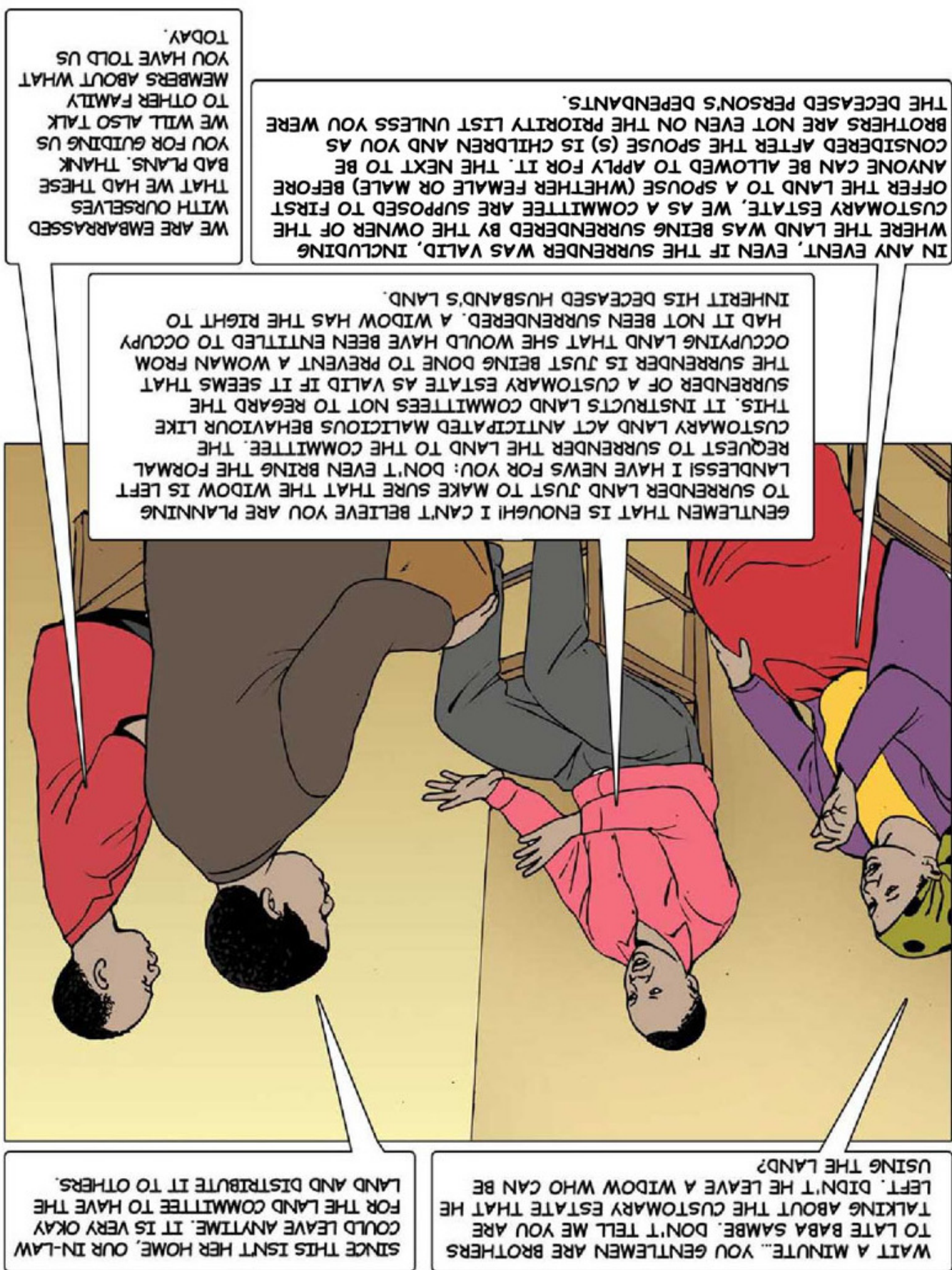
YOU HAVE TO BE VERY CAREFUL. A LOT OF WEALTHY PEOPLE WILL TRY TO TAKE ADVANTAGE OF THE FACT THAT CUSTOMARY LAND IS NOW BEING REGISTERED BY INDIVIDUALS AND OFFER MONEY TO BUY THE LAND. WITHOUT LAND, RURAL PEOPLE WILL BECOME POORER. THE BEST WAY IS FOR YOU TO IMPROVE THE AGRICULTURAL PRODUCTIVITY OF YOUR LAND SO THAT IT CAN BRING YOU MONEY. WITH YOUR LAND CERTIFICATE, YOU CAN EVEN TAKE A LOAN FROM FINANCIAL INSTITUTIONS TO INVEST IN AGRICULTURE. DID YOU ASK FOR YOUR CHILDREN'S CONSENT TO SELL THE LAND?

NO I DIDN'T BOTHER SINCE I KNOW THAT I AM ACTING IN THEIR BEST INTEREST. THOUGH MY CHILDREN WILL ALSO LOSE THE LAND SINCE I HAVE APPLIED FOR REGISTRATION IN ALL OUR NAMES, I THOUGHT SELLING IT WAS A GOOD DECISION.

THE CUSTOMARY LAND ACT SAYS THAT DURING THE FIRST FIVE YEARS OF GETTING THE CUSTOMARY LAND CERTIFICATE, NO TRANSACTION INVOLVING THE LAND CAN HAPPEN WITHOUT THE APPROVAL OF THE TA AND THE CUSTOMARY LAND COMMITTEE. THIS IS FOR OUR OWN PROTECTION SO THAT WE DON'T IMPULSIVELY SELL OUR CUSTOMARY ESTATES JUST TO MAKE IMMEDIATE GAINS. ADDITIONALLY, THE LAW PROVIDES THAT ANYONE CANNOT DISPOSE THE LAND—INCLUDING SELLING—TO ANY PERSON OUTSIDE THEIR IMMEDIATE FAMILY DURING THE FIRST YEARS. IF THEY WANT TO DO SO, THE CUSTOMARY LAND COMMITTEE HAS TO BE FIRST CONVINCED THAT THERE IS AN EMERGENCY, AND THAT ALL THE DEPENDENTS OR MEMBERS OF A FAMILY UNIT HAVE AGREED TO THE SALE. FOR CUSTOMARY ESTATE CERTIFICATES THAT WILL BE GRANTED TO A FAMILY UNIT AS IN YOUR CASE, A SALE OF THE LAND WITHOUT THE WRITTEN CONSENT OF ALL PERSONS NAMED ON THE LAND CERTIFICATE WOULD BE INVALID.

YOU HAVE GIVEN ME USEFUL ADVICE. I WAS WRONG TO CONSIDER SELLING THE LAND. I WILL START PLANNING TO USE IT FOR BUSINESS. BUT WHAT IF THE CUSTOMARY LAND COMMITTEE NOW HEARS OF THIS AND DECIDES NOT TO GRANT THE CUSTOMARY ESTATE IN MY NAME?





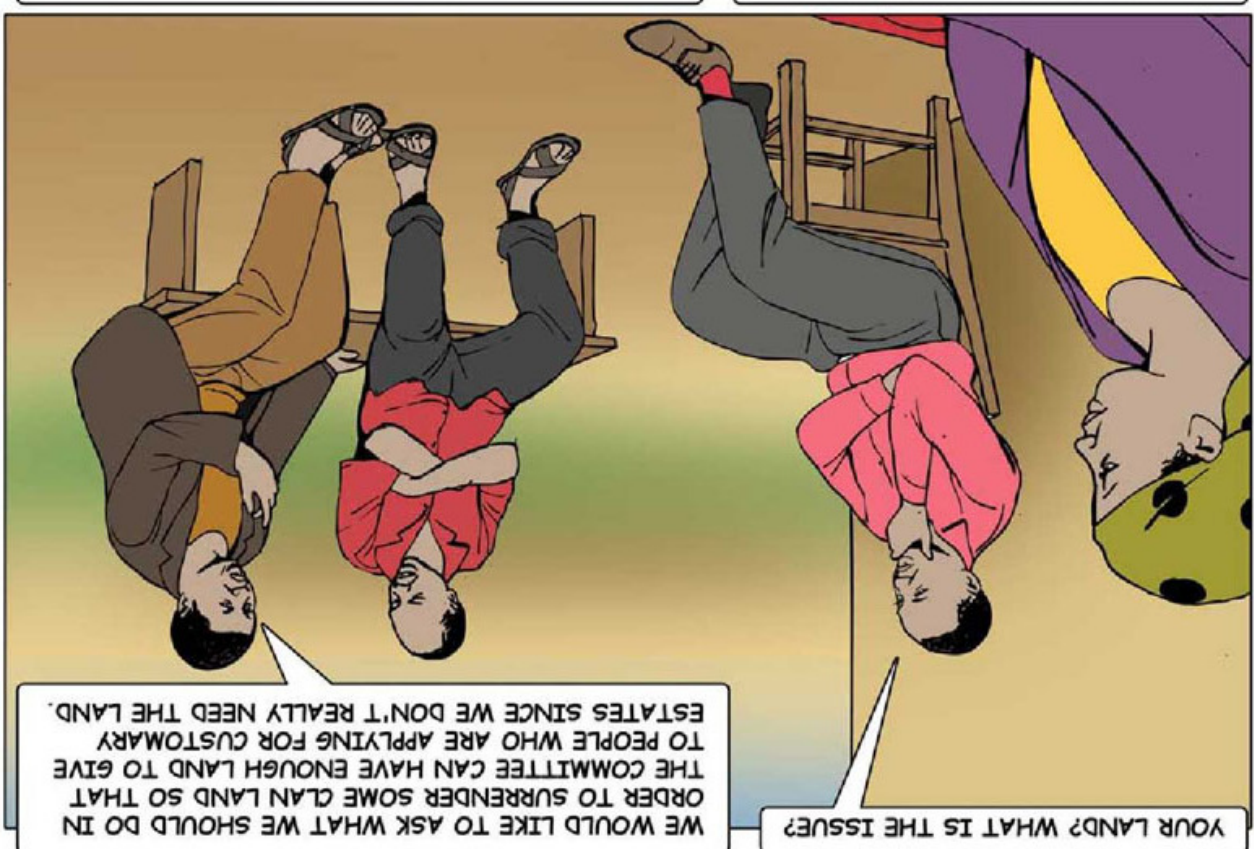
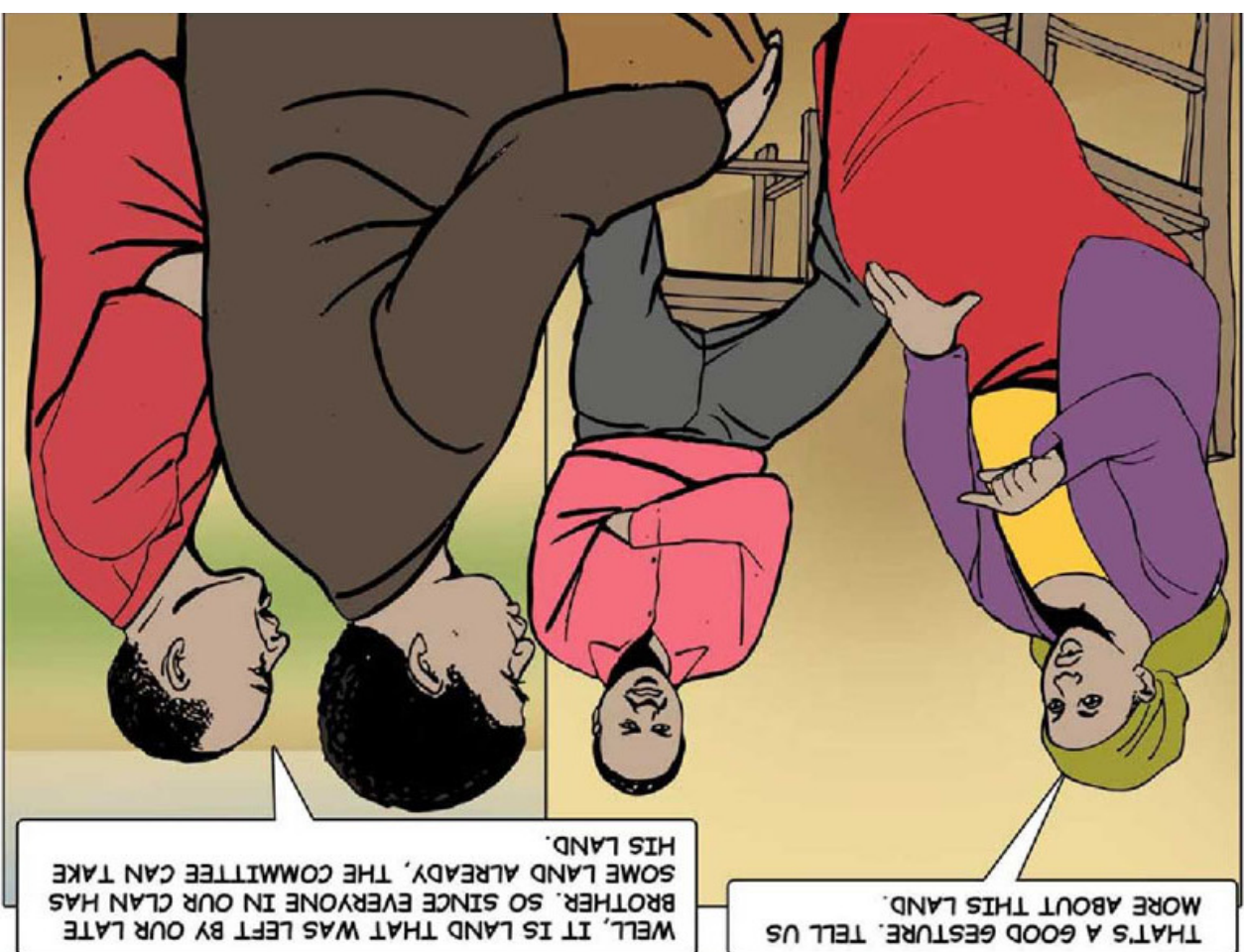
WAIT A MINUTE... YOU GENTLEMEN ARE BROTHERS TO LATE BABA SAMBE. DON'T TELL ME YOU ARE TALKING ABOUT THE CUSTOMARY ESTATE THAT HE LEFT. DIDN'T HE LEAVE A WIDOW WHO CAN BE USING THE LAND?

SINCE THIS ISN'T HER HOME, OUR IN-LAW COULD LEAVE ANYTIME. IT IS VERY OKAY FOR THE LAND COMMITTEE TO HAVE THE LAND AND DISTRIBUTE IT TO OTHERS.

GENTLEMEN THAT IS ENOUGH! I CAN'T BELIEVE YOU ARE PLANNING TO SURRENDER LAND JUST TO MAKE SURE THAT THE WIDOW IS LEFT LANDLESS! I HAVE NEWS FOR YOU: DON'T EVEN BRING THE FORMAL REQUEST TO SURRENDER THE LAND TO THE COMMITTEE. THE CUSTOMARY LAND ACT ANTICIPATED MALICIOUS BEHAVIOUR LIKE THIS. IT INSTRUCTS LAND COMMITTEES NOT TO REGARD THE SURRENDER OF A CUSTOMARY ESTATE AS VALID IF IT SEEMS THAT THE SURRENDER IS JUST BEING DONE TO PREVENT A WOMAN FROM OCCUPYING LAND THAT SHE WOULD HAVE BEEN ENTITLED TO OCCUPY HAD IT NOT BEEN SURRENDERED. A WIDOW HAS THE RIGHT TO INHERIT HIS DECEASED HUSBAND'S LAND.

IN ANY EVENT, EVEN IF THE SURRENDER WAS VALID, INCLUDING WHERE THE LAND WAS BEING SURRENDERED BY THE OWNER OF THE CUSTOMARY ESTATE, WE AS A COMMITTEE ARE SUPPOSED TO FIRST OFFER THE LAND TO A SPOUSE (WHETHER FEMALE OR MALE) BEFORE ANYONE CAN BE ALLOWED TO APPLY FOR IT. THE NEXT TO BE CONSIDERED AFTER THE SPOUSE (S) IS CHILDREN AND YOU AS BROTHERS ARE NOT EVEN ON THE PRIORITY LIST UNLESS YOU WERE THE DECEASED PERSON'S DEPENDANTS.

WE ARE EMBARRASSED WITH OURSELVES THAT WE HAD THESE BAD PLANS. THANK YOU FOR GUIDING US WE WILL ALSO TALK TO OTHER FAMILY MEMBERS ABOUT WHAT YOU HAVE TOLD US TODAY.



Activity 7: Surrender and sale of customary estates & dispute handling

I HAVE HEARD A RUMOUR THAT A WIDOW IN THE NEXT VILLAGE IS PLANNING TO REGISTER THE LAND THAT THE FAMILY ALLOWED HER TO CONTINUE USING IN HER OWN NAME. APPARENTLY THE CUSTOMARY LAND ACT IS ALLOWING A SPOUSE TO INHERIT A CUSTOMARY ESTATE BELONGING TO THEIR DECEASED SPOUSE. I'M WORRIED THAT WITH THE DEATH OF OUR BROTHER, OUR IN-LAW MAY STEAL OUR CLAN LAND IN BROAD DAYLIGHT.

LET US ACT FAST. I WAS TOLD THAT UNDER THE CUSTOMARY LAND ACT, A PERSON CAN SURRENDER CUSTOMARY LAND SO THAT IT SHOULD BE ALLOCATED TO OTHERS. LET US GO TO THE CHIEF AND TELL HIM THAT WE WANT TO SURRENDER SOME OF OUR CLAN LAND, AND THE LAND THAT OUR DECEASED BROTHER REGISTERED AS A CUSTOMARY ESTATE SO THAT THE WIDOW SHOULD HAVE NOTHING TO INHERIT.



HALLO GENTLEMEN, YOU HAVE JUST FOUND US FINISHING A QUICK MEETING WITH MY COLLEAGUE HERE WHO SITS WITH ME IN THE CUSTOMARY LAND COMMITTEE. COME AND SIT DOWN, SHE WILL BE LEAVING SHORTLY.

ACTUALLY WE CAME IN RELATION TO AN ISSUE CONCERNING LAND, SO SHE CAN STAY.



Land dispute settlement is one of the key components of the new Customary Land Act that is ensuring that traditional land administration and land resource management is better organized. The Customary Land Act is promoting transparency and accountability on land matters as provided for in the Constitution of the Republic of Malawi.

Time: 2 hours.

Objective: To discuss new mechanisms for handling customary land disputes.

Questions for discussions

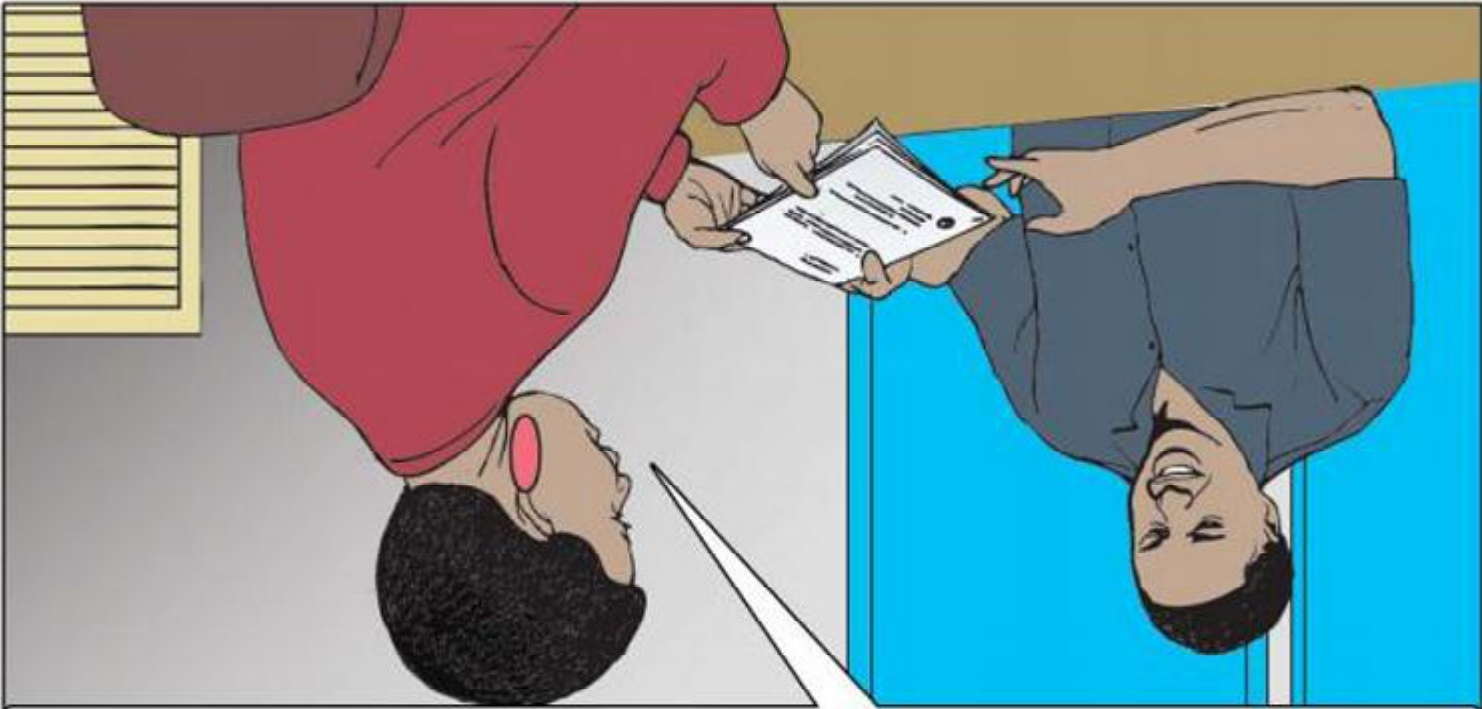
- 1) In what ways have land disputes been handled in the past? How has this process been fair/unfair to all groups of society, including women and vulnerable groups (and who are the vulnerable groups in the community precisely)?
- 2) In what ways will the new mechanisms of handling customary land disputes through land tribunals improve land administration at traditional level, if at all?
- 3) What new opportunities and challenges does land dispute resolution through land tribunals offer, especially to women and vulnerable groups in society? What can we do to maximize the opportunities and minimize the challenges?
- 4) In what ways can we ensure that women in land tribunals are fully empowered to effectively contribute to decisions of the tribunals at the same level as men?
- 5) What approaches can land tribunals adopt to ensure that they are not promoting discrimination on the basis of sex, disability, social or other status in their decisions? What are the benefits of such approaches?
- 6) What measures can land tribunals take to ensure that their decisions are not influenced by corrupt practices amongst the members?
- 7) How can land tribunals ensure that they are accessible to community members and that their role is known by all groups of society?

Notes that can be helpful to the discussion

- The Customary Land Act has created the **customary land tribunal, district land tribunal and Central Land Board** as three structures for handling disputes concerning customary land where anyone who is occupying or has an interest in a customary estate has a complaint against a decision that has been made by a land committee or the Commissioner for Lands. **See a description of these tiers, as well as membership composition and qualifications in the notes under Activity 7.**

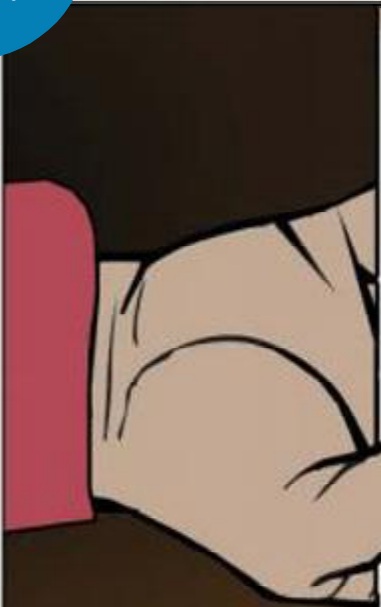
- The land tribunal is empowered to first attempt to broker an agreement between the persons that are involved in a dispute. However, if the persons fail to reach some agreement, a land tribunal shall proceed to make its decision. The land tribunal shall inform any person who is aggrieved by the decision of their right to appeal either to the district land tribunal (if matter was being heard by a customary land tribunal), or Central Land Board (if matter was being heard by a district land tribunal). Aggrieved persons can also appeal to High Court.
- In case of complaints concerning how the land committee has exercised its functions in determining claims/rights and boundaries to land, a person who is unhappy with the determination has the right to appeal to the customary land tribunal within 30 days from the date when the land committee publishes the information of persons who are entitled to various pieces of land. If any persons who haven't appealed are likely to be negatively affected by a decision of the tribunal, they should be given the right to be heard before the tribunal reaches its decision. **See notes under Activity 4 for decisions that the tribunal can make in such instances.**

IF THE TRIBUNAL DISCHARGES ITS MANDATE IN ACCORDANCE WITH THE CUSTOMARY LAND ACT, ALL WILL BE FINE. IF YOU ARE DISSATISFIED WITH ITS DECISION, YOU CAN APPEAL TO THE DISTRICT LAND TRIBUNAL, OR THEREAFTER TO THE CENTRAL LAND BOARD OR THE HIGH COURT RESPECTIVELY. BY THE WAY I HAVE THIS DOCUMENT THAT YOU CAN TAKE AND READ AT HOME SO THAT YOU SHOULD UNDERSTAND THE MANDATE OF THE LAND TRIBUNALS.



WHEN EXERCISING ITS FUNCTIONS, A LAND TRIBUNAL SHOULD:

- ✓ Be objective, fair and just by taking into account the rights and obligations that the persons involved in the conflict have, as well as any laws and traditional practices that align with the Constitution. *Therefore, a land tribunal cannot apply laws and traditions that discriminate against women and other vulnerable groups in its decisions.*
- ✓ Consider all the circumstances of the case, including whether the persons involved in the dispute have had dealings/disputes with each other before.
- ✓ Consider the wishes of the persons involved in the dispute, the circumstances of the case, and the need to reach a speedy settlement.
- ✓ Meet and communicate with the persons involved in the dispute either together or separately.
- ✓ At any stage of the proceedings, make written proposals (justified with reasons) for the settlement of the dispute.
- ✓ Facilitate the development of an agreement if the persons involved in the dispute are finding some solutions agreeable/acceptable. Any agreement should be commented on and signed by those involved in the dispute for it to be binding.
- ✓ Require any person that is interested in/affected by the dispute to appear before the tribunal, and/or for documentation relating to the matter to be provided.
- ✓ Proceed with the matter if a person who is required to appear before the tribunal fails to do so after being given notice on two occasions; or if there is failure to produce any document that was demanded by the tribunal without valid reasons.
- ✓ Inform any persons aggrieved with the tribunal's decision of their right to appeal to the District Land Tribunal, or Central Land Board or the High Court.



THANK YOU FOR YOUR ADVICE. I JUST WONDER IF THE TRIBUNAL WILL BE FAIR SINCE MR GAMA IS A POPULAR MAN IN THE VILLAGE AND HAS BEEN KNOWN TO CORRUPT PEOPLE.




ACTUALLY, MEMBERS OF THE CUSTOMARY LAND TRIBUNAL ARE NOMINATED BY THE T.A. FOLLOWING A CRITERIA THAT IS SET BY THE CUSTOMARY LAND ACT, AND THEY ARE APPROVED BY THE COMMISSIONER FOR LAND. SO MY ADVICE IS THAT YOU SHOULD VISIT YOUR T.A. AND REGISTER YOUR COMPLAINT WITH THE TRIBUNAL. THEY WILL INVITE YOU AND THE OTHERS WHO ARE INVOLVED IN THE DISPUTE TO A HEARING TO DETERMINE THE MATTER. THE TRIBUNAL IS LEGALLY MANDATED TO PROCEED WITH HEARING A MATTER IF AT LEAST FOUR OF ITS MEMBERS, INCLUDING TWO WOMEN, ARE PRESENT. ANY MEMBER SHOULD EXCUSE ONESELF FROM HEARING A MATTER IN WHICH THEY HAVE AN INTEREST.




I AM SURPRISED TO HEAR OF THE EXISTENCE OF SUCH A STRUCTURE BECAUSE I DON'T REMEMBER THAT WE AS COMMUNITY MEMBERS ELECTED ITS MEMBERS THE SAME WAY WE DID WITH THE CUSTOMARY LAND COMMITTEE.

I HAVE COME TO PROCESS A SUMMONS. FOR THE PAST MONTHS, THE LAND COMMITTEE IN MY GROUP VILLAGE HEADMAN'S AREA HAS BEEN IMPLEMENTING A PROCESS OF ASCERTAINING PERSONS WHO HAVE CLAIMS TO PIECES OF CUSTOMARY LAND SO THAT THEY CAN BE GRANTED CUSTOMARY ESTATE CERTIFICATES. SURPRISINGLY, MR GAMA STARTED CLAIMING THAT TWO PIECES OF LAND THAT BELONG TO MY FAMILY-BUT WHICH WE ADMITTEDLY HAVEN'T USED FOR YEARS-BELONG TO HIM. THE LAND COMMITTEE DETERMINED THAT MR GAMA'S CLAIM IS VALID, BUT I DON'T AGREE.



YOU HAVE COME TO A WRONG FORUM. THIS IS A MATTER THAT SHOULD BE HANDLED BY THE CUSTOMARY LAND TRIBUNAL IN YOUR AREA. DO YOU KNOW OF THIS TRIBUNAL?

NOT REALLY. I AM ONLY AWARE OF THE COMMITTEE COMPRISING OF THREE MEN AND THREE WOMEN THAT WE ELECTED SOME TIME AGO TO MANAGE LAND IN OUR AREA. BUT THIS IS THE SAME COMMITTEE THAT HAS MADE THE DECISION THAT I AM COMPLAINING ABOUT.



YOU ARE TALKING ABOUT A CUSTOMARY LAND COMMITTEE. THE CUSTOMARY LAND TRIBUNAL IS RESPONSIBLE FOR HANDLING ANY LAND DISPUTES IN A TRADITIONAL LAND MANAGEMENT AREA. IT IS CONSTITUTED BY THE T.A. (CHAIRPERSON), AND SIX COMMUNITY MEMBERS, AT LEAST THREE OF WHOM ARE TO BE WOMEN.

In some cases the process of ascertaining claims to land and surveying/demarcation may expose that some pieces of land that the community regarded as customary land are in fact public land. Such land will be handed over to government accordingly.

- Land that is occupied by an individual, family or group of persons under customary law. *This land can be granted as a customary estate by a land committee to a citizen or group of citizens of Malawi.*
- Land that may be available for communal use or individual occupation and use through allocation by a land committee. *The latter can be granted as a customary estate by a land committee to a citizen or group of citizens of Malawi.*
- In exercising its adjudication or any functions, a land committee has no power over customary land that is occupied by any organization or body (government department/office, statutory/parastatal body, a registered company or whose members/shareholders are Malawian citizens) under an existing lease (granted before the operationalization of the Customary Land Act) within a Traditional Land Management Area. The lease shall be valid until it expires, and shall be under the responsibility of the Commissioner for Lands.
- As part of the adjudication process, the land committee should ensure that the following is prepared:
 - A provisional map that follows the requirements of the Land Survey Act (2016). The map is provisional because it can possibly be changed if irregularities are discovered.
 - A provisional record showing existing claims/rights to land that have been established by the land committee. This record shall be posted in a clearly visible place in the area. The provisional record shall become a final adjudication record after 30 days of its publication. If any person lodges an appeal against the provisional record, the record shall become final 30 days after the appeal is determined.
- In promoting principles of gender equality and non-discrimination, the land committee should use the process of adjudication to identify people who do not have claims to any land in the area, so that the committee can prioritize their applications for customary estates. Usually, such groups are women, people with disability, the very poor and child/elderly headed households.
- If there is a complaint to the Council by a person or group of persons with interest in land to which area adjudication is applied that the adjudication is being handled unfairly or improperly, the Council shall investigate the complaint and if found valid, shall issue any directive to the concerned land committee to:
 - Improve or correct the process;
 - Stop exercising any powers of adjudication;
 - Send all records and other information that the Council may specify;
 - Fully cooperate with officers of the Council that have taken over the role of adjudication on behalf of the Council;
 - Stop the area adjudication and take it over to be handled at district level as 'district adjudication'.

Time: 2 hours.

Objective: To understand the process of 'land adjudication' and the role of the land committee in the process.

Questions for discussions

- 1) In what ways will land adjudication help the land committee to perform its functions of land management and land allocation better?
- 2) What are some of the potential challenges that we can encounter in the land adjudication process? How can we address such challenges?
- 3) How can the committee demonstrate to the community that it is fully transparent and accountable in facilitating the process of land adjudication?
- 4) In what ways can the land rights of women and other vulnerable groups be treated less favourably than the rights of men in the adjudication process? How can we avoid any forms of discrimination?
- 5) In what ways will community members (men, women and vulnerable groups) benefit from the land adjudication process?
- 6) What steps can we take to ensure that all community members (men, women and vulnerable groups) benefit from the land adjudication process?

Notes that can be helpful to the discussion

- The Customary Land Act provides that a grant of customary estate shall not be made to any person, group of persons, organization, or body unless the boundaries and interest in that land have been adjudicated/determined in accordance with the law.
- Adjudication is of two types:

– *Area adjudication:* This type of adjudication is handled at the level of Traditional Land Management Area (TLMA). The responsibility for such adjudication lies with a customary land committee that is responsible for the area where land is to be surveyed/demarcated as well as where those who hold interests in the land are to be determined. The Council can on its own, or upon receiving an application from not less than 50 people in a Traditional Land Management Area, recommend to the TA responsible for the TLMA that all land that is available for grants of customary estates should be adjudicated.

– *District adjudication:* This is where the adjudication process is handled at district level. The Council can decide that district adjudication be applied to land within a Traditional Land Management Area in its territory. This means that instead of vesting responsibility for adjudication in the land committee, a land clerk becomes responsible for supervising and controlling the process of determining interests in land and surveying/demarcation. In so doing, the land clerk has the power to administer oaths, and issue summons, notices and orders requiring anyone to attend or produce documents relevant to the adjudication process. A process of district adjudication can also be ordered by the Council if there is a valid complaint that a land committee is applying the process of area adjudication improperly and unfairly. In such instances, the Council can issue a directive that the area adjudication should stop so that the adjudication should be handled at district level instead.

- In handling its adjudication functions, the customary land committee should be aware of the three groups of land that should exist in a Traditional Land Management Area:
 - Land that is occupied and used or available for occupation and use on a communal basis (communal land). *A land committee is responsible for determining the portion of customary*

UPON HEARING AN APPEAL AGAINST THE DETERMINATION OF A LAND COMMITTEE REGARDING LAND ADJUDICATION, THE CUSTOMARY LAND TRIBUNAL SHALL HAVE THE POWER TO:

- ✓ Amend the information regarding persons who hold land rights over different pieces of land;
- ✓ Amend the demarcation map that has established land boundaries;
- ✓ Correct any errors in the information regarding persons who hold land rights over different pieces of land;
- ✓ Direct that the land clerk should conduct further investigations into the complaint.

However, the Customary Land Tribunal shall not propose any decision without first hearing the side of story of other persons who may be negatively affected by the decision, especially if such persons are not involved in the appeal.

IN ADDITION TO ALL THAT HAS BEEN DISCUSSED, ANY PERSON OR GROUP OF PERSONS WHO WANT TO APPLY FOR A CUSTOMARY ESTATE, AND YET THEIR LAND HAS NOT BEEN OFFICIALLY SURVEYED/DEMARCATED, CAN ASK THE LAND COMMITTEE TO DO WHAT IS CALLED 'SPOT ADJUDICATION'. THIS SIMPLY MEANS THAT THE LAND COMMITTEE WILL COME AND ASCERTAIN LAND RIGHTS AND BOUNDARIES OVER A SPECIFIC PIECE OF LAND THAT SO THAT A CUSTOMARY ESTATE CAN BE GRANTED IN RESPECT OF THAT LAND.



The land law provides for democratization of land administration to promote transparency and accountability on land matters as provided for in the Constitution of Malawi.

The entire land area will be demarcated and registered as falling under the jurisdiction of each Traditional Authority and will be known officially as a "Traditional Land Management Area." This designation will be used to disclose the root of title and allocating jurisdiction of legally recognized Traditional Authorities.



WHAT IS ALSO IMPORTANT TO KNOW IS THAT THE LAND COMMITTEE WILL PUBLISH THE RECORD OF WHO HOLDS LAND RIGHTS OVER DIFFERENT PIECES OF LAND, AS WELL AS THE DEMARCATION MAP AND THE COMMITTEE WILL HAVE ACCESS TO THE INFORMATION. IF ANY PERSON DOES NOT AGREE WITH THE DETERMINATION OF THE LAND COMMITTEE REGARDING ANY RIGHTS AND BOUNDARIES TO LAND, HE/SHE CAN APPEAL TO THE CUSTOMARY LAND TRIBUNAL WITHIN 30 DAYS FROM THE DATE WHEN THE COMMITTEE PUBLISHES THE INFORMATION.



THERE IS NO REASON TO FEAR MAI MWALE BECAUSE IF THE COMMITTEE FINDS THAT LAND IS NOT OCCUPIED OR USED BY ANY PERSON OR GROUP OF PERSONS, SUCH LAND MAY FORMALLY BE DECLARED TO BE COMMUNAL LAND THAT IS ACCESSIBLE TO THE WHOLE COMMUNITY FOR VARIOUS USES.

IT IS A GOOD THING THAT THIS PROCESS WILL ENSURE THAT THE LAND COMMITTEE HAS COMPREHENSIVE INFORMATION ABOUT 'WHO OWNS WHICH LAND.' HOWEVER, I'M AFRAID THAT THE PROCESS WILL ALSO EXPOSE THE LAND THAT IS CURRENTLY NOT OCCUPIED BY ANYONE. WE USUALLY USE THIS LAND FOR GRAZING ANIMALS AND YET YOU MAY NOW DECIDE TO ALLOCATE IT TO INDIVIDUALS.

WE HAVE SEEN SOME ORGANIZATIONS THAT OCCUPY AND USE CUSTOMARY LAND IN THIS AREA DUBIOUSLY. WON'T THE PROCESS OF ASCERTAINING LAND CLAIMS/RIGHTS AND SURVEYING/DEMARCATION MAKE SUCH ORGANIZATIONS LEGAL OCCUPIERS OF THE LAND?



NO. THE LAW STATES THAT AN ORGANIZATION OR BODY THAT IS OCCUPYING CUSTOMARY LAND WITHOUT ANY RIGHTFUL CLAIM IS AN UNAUTHORIZED OCCUPIER. AFTER THE SURVEYING/DEMARCATION PROCESS, SUCH ORGANIZATION OR BODY CAN BE PERMITTED BY THE LAND COMMITTEE TO REMAIN ON THE LAND AND CARRY ON ITS BUSINESS JUST FOR 12 MORE MONTHS.

WHAT WILL HAPPEN TO LAND THAT PEOPLE HAVE BEEN USING AS A GROUP?



IF THE GROUP OF PERSONS HAS BEEN OCCUPYING LAND UNDER CUSTOMARY OR ANY LAW WITHOUT CONFLICT, AND WITH THE KNOWLEDGE OF OTHER COMMUNITY MEMBERS FOR AN UNINTERRUPTED PERIOD, THE LAND COMMITTEE WILL GRANT THE GROUP A CUSTOMARY ESTATE OVER SUCH LAND.

A PERSON WHO HAS BEEN OCCUPYING LAND UNDER CUSTOMARY LAW WITHOUT CONFLICT, AND WITH THE KNOWLEDGE OF OTHER COMMUNITY MEMBERS FOR AN UNINTERRUPTED PERIOD OF 12 YEARS OR MORE WILL BE ENTITLED TO A CUSTOMARY ESTATE AFTER THE SURVEYING/DEMARCATON PROCESS IS COMPLETED. SUCH A PERSON JUST HAS TO MAKE A FORMAL APPLICATION IN ORDER FOR COMMITTEE TO GRANT A CERTIFICATE OF CUSTOMARY ESTATE.



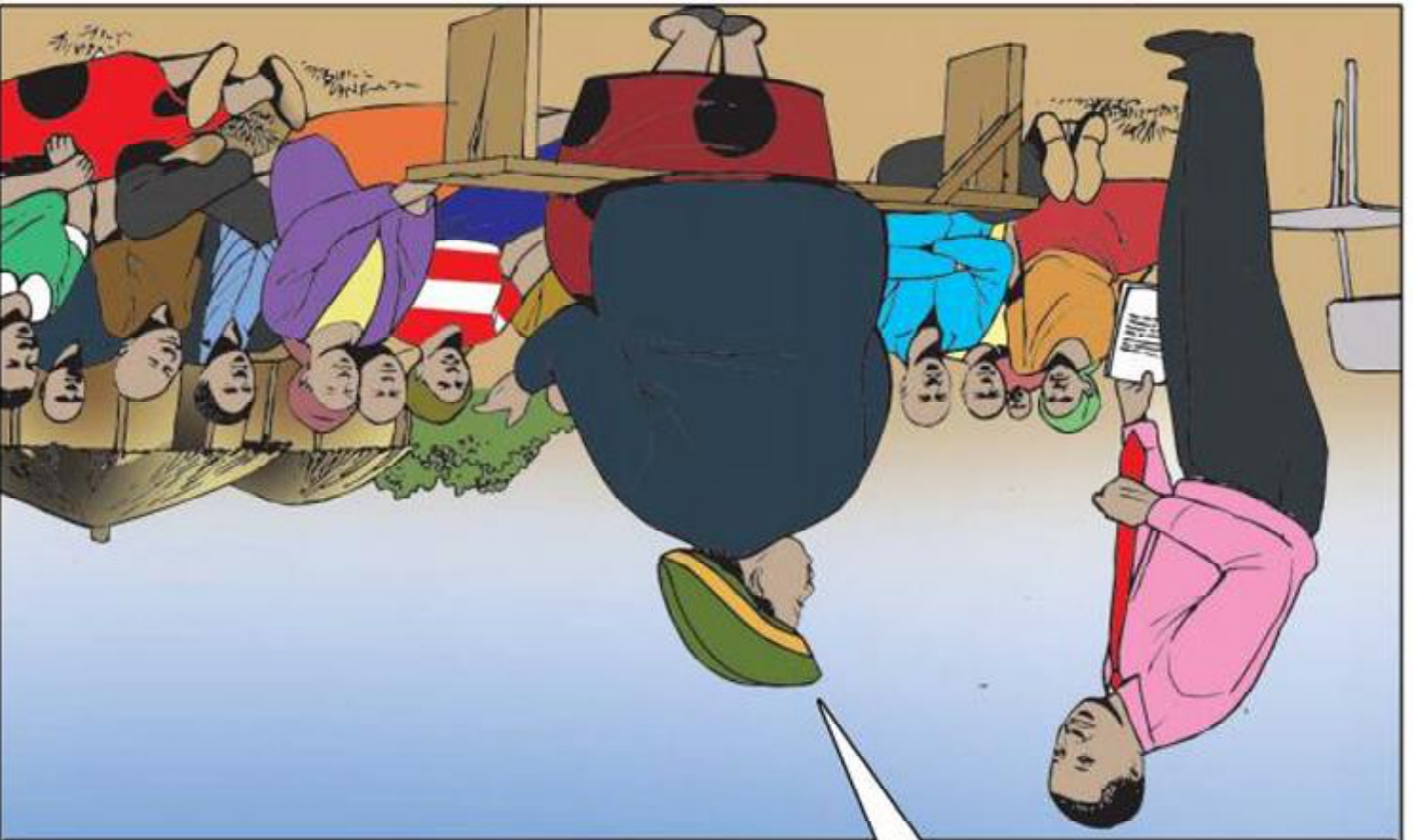
DUE TO DISCRIMINATION THAT WOMEN AND OTHER MARGINALIZED GROUPS USUALLY FACE, HOW CAN WE BE SURE THAT THEIR RIGHTS WILL BE PROTECTED WHEN THE LAND COMMITTEE IS MAKING ITS DETERMINATION ABOUT WHO HAS EXISTING RIGHTS TO CUSTOMARY LAND?



LAND COMMITTEES AND ADJUDICATING OFFICERS ARE REQUIRED TO BE FULLY MINDFUL OF THE RIGHTS OF WOMEN AND OTHER VULNERABLE GROUPS TO OCCUPY, USE OR HAVE ANY INTEREST IN LAND. THE LAW CLEARLY SAYS THAT THE RIGHTS OF THESE GROUPS SHOULD NOT BE TREATED LESS FAVOURABLY THAN THE RIGHTS OF MEN. FURTHERMORE, THE PROCESS OF ADJUDICATION WILL HELP TO CLEARLY SEE THE CATEGORIES OF PEOPLE IN OUR AREA WHO DO NOT HAVE CLAIMS TO ANY LAND, SO THAT THEIR APPLICATIONS FOR CUSTOMARY ESTATES CAN BE PRIORITIZED BY THE COMMITTEE.

YOU SAY THAT AFTER THE PROCESS OF DETERMINING WHO HOLDS RIGHTS TO THE LAND AND SURVEYING/DEMARCATING THE LAND, THE LAND COMMITTEE WILL START GRANTING CUSTOMARY ESTATES EVEN TO OTHERS. DOES THIS MEAN THAT OUR LAND OR SOME OF IT WILL BE TAKEN AWAY DESPITE THAT FOR MANY OF US, OUR GRANDPARENTS, PARENTS AND NOW OURSELVES HAVE USED THE SAME LAND FOR MANY YEARS?

AS YOU SAW IN THE NOTICE, THE PURPOSE OF THIS MEETING IS TO HEAR IF YOU HAVE ANY CONCERNS OR QUESTIONS BEFORE THE LAND COMMITTEE STARTS OFFICIALLY DETERMINING WHO HAS RIGHTS TO VARIOUS PIECES OF LAND IN THIS AREA. WHEN ALL IS CLARIFIED AND THE ADJUDICATION PROCESS IS COMPLETED, THE COMMITTEE CAN START GRANTING YOU AND OTHERS CUSTOMARY ESTATES, SO THAT YOU HAVE YOUR OWN LAND CERTIFICATES. WITH ME ARE SEVERAL LAND COMMITTEE MEMBERS WHO WILL ANSWER YOUR QUESTIONS



THEREFORE, ADJUDICATION IS A WAY OF ENSURING THAT BOTH MEN AND WOMEN HAVE STRONG LAND RIGHTS BECAUSE UNREGISTERED LAND TRANSACTIONS WILL BE MINIMIZED. FURTHERMORE, THERE WILL BE PROPER RECORDS REGARDING: WHO OWNS LAND, WHERE, AND OF WHAT SIZE.



THAT IS VERY TRUE. THE LAND COMMITTEE'S ROLE IS TO ENSURE THAT WE HAVE A SMOOTH AND EFFICIENT LAND ADJUDICATION PROCESS IN THIS AREA. THIS IS WHY, IN ACCORDANCE WITH THE LAW, YOU SAW THAT WE POSTED A CLEARLY VISIBLE NOTICE IN MANY PARTS OF THE VILLAGE TO LET PEOPLE KNOW THAT THERE WILL BE A PROCESS OF DETERMINING EXISTING RIGHTS AND INTERESTS IN LAND IN THE AREA, INCLUDING SURVEYING/DEMARCATING THE LAND-AND THAT ANYONE WHO CLAIMS ANY INTEREST IN THE LAND SHOULD COME TO THIS MEETING.

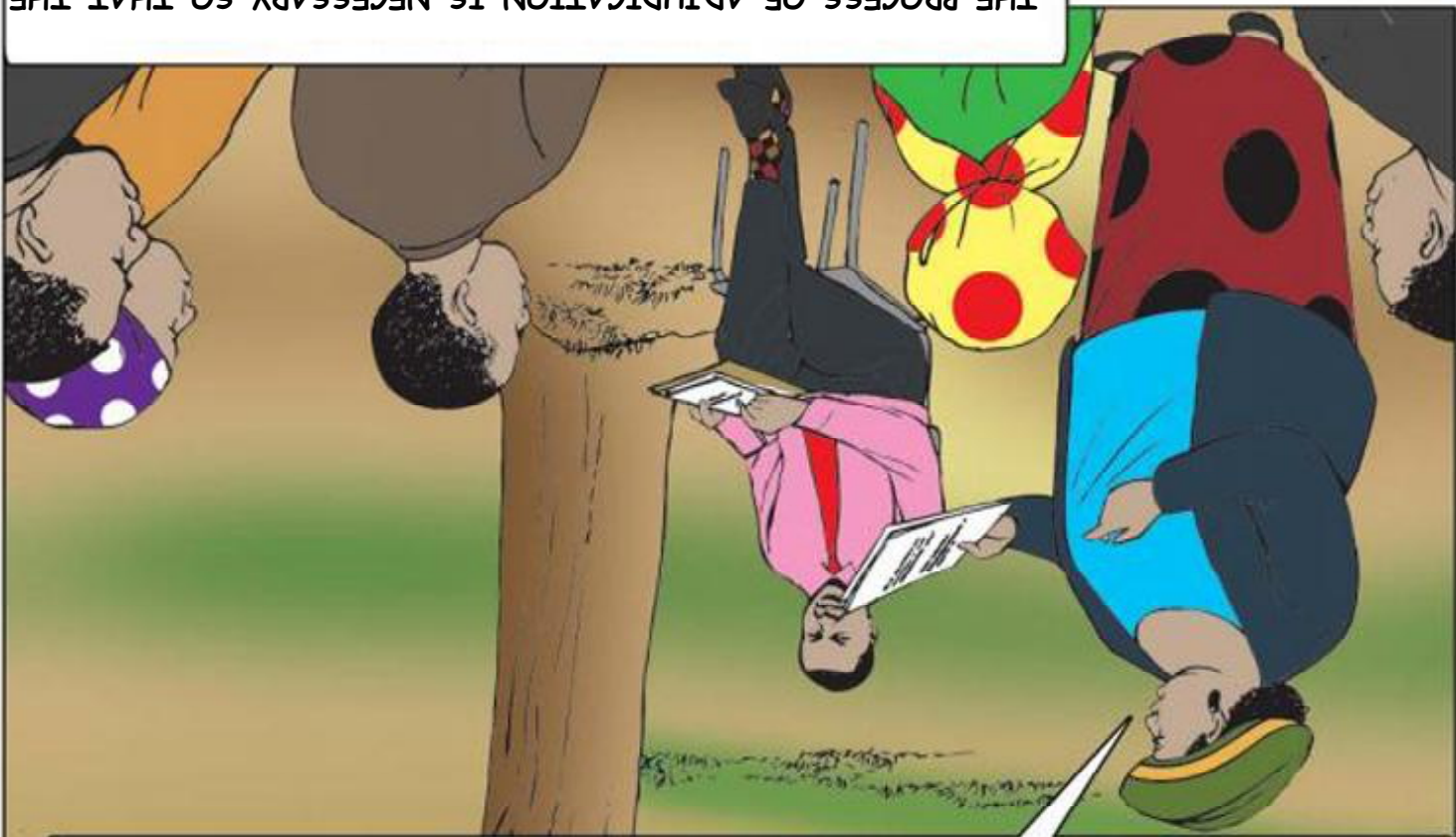
THE NOTICE FOR LAND ADJUDICATION TO BE PUBLICIZED IN THE COMMUNITY SHOULD:

- ✓ Specify the approximate area to be surveyed/demarcated.
- ✓ Require all persons who claim to have any interest in the land to attend a meeting, at a specified date and venue, in order to submit their claims.
- ✓ Require any persons who claim to occupy pieces of land within the area to be surveyed/demarcated to mark their boundaries in such a way as may be specified in the notice.



Activity 5: How can the land committee perform its land adjudication function?

HERE I HAVE A LETTER FROM THE T.A ADVISING THAT UNDER THE NEW CUSTOMARY LAND ACT, THE LAND COMMITTEE SHOULD DETERMINE WHO HAS EXISTING RIGHTS AND INTEREST IN DIFFERENT PIECES OF CUSTOMARY LAND IN THE AREA. BEFORE GRANTING ANY CUSTOMARY ESTATE, THE COMMITTEE HAS TO ENSURE THAT THE LAND IS DEMARCATED/SURVEYED APPROPRIATELY. THE LAW IS CALLING THIS PROCESS 'ADJUDICATION,' AND THE CLERK WILL EXPLAIN MORE ABOUT THE PROCESS.



THE PROCESS OF ADJUDICATION IS NECESSARY SO THAT THE COMMITTEE CAN MAKE A FINAL DETERMINATION ABOUT PERSONS WHO HAVE RIGHTS AND CLAIMS OVER DIFFERENT PIECES OF CUSTOMARY LAND, AS WELL AS THE BOUNDARIES OF SUCH LAND. THIS PROCESS IS ESPECIALLY IMPORTANT WHERE LAND THAT IS ORIGINALLY HELD AS CUSTOMARY LAND IS TO BE CONVERTED INTO A CUSTOMARY ESTATE SO THAT A CERTIFICATE CAN BE ISSUED AS EVIDENCE THAT A PERSON OR GROUP OF PERSONS PRIVATELY OWN(S) THE LAND.



The following checklist can be applied by a land committee to ensure effectiveness in its role of granting customary estates:

✓	Is the application for a customary estate made on an appropriate form?
✓	If only one person is applying, is the form signed by the applicant?
✓	If the application is by a family unit, is it signed by at least two persons within the family unit?
✓	If the application is made by a group of persons recognized under customary law, is it signed by at least two recognized elders/leaders of the group?
✓	If the application is made by an association, cooperative, or body corporate, is it signed by at least two authorized members?
✓	Has the Commissioner for Lands been consulted, and has he/she given any guidance regarding the application of land by an association, cooperative, or body corporate that should be taken into account in deciding the application?
✓	Is any fee required by law to accompany the application? If yes, has it been paid?
✓	Does the application contain all relevant information to help the committee in determining the application? If not, has the committee timely requested for specific information from the applicant?
✓	Are there any decisions that have previously been made by a local authority concerning boundaries and rights related to land which should be complied with in making the decision on whether or not to allocate a customary estate?
✓	Has the committee taken care to ensure that applications from women and people with disabilities are not treated less favourably?
✓	Has the committee taken care to ensure that its decision is not influenced by any discriminatory practices or attitudes against any applicant?
✓	If the application is from a person or group of persons that ordinarily reside in the village: does the person or group of persons already occupy land under a customary estate to avoid a scenario of too much land being given to the same persons? Is the person or group of persons strictly complying with the terms and conditions governing another customary estate that he/she/it already occupies? Does the applicant have or is likely to obtain necessary skills and knowledge for him/her to use the land productively and in accordance with the terms and conditions that may be imposed regarding the use of the land?
✓	If the applicant is a person or group of persons not ordinarily resident in the traditional land management area, does the land committee have clear information about the amount of the land being applied for, and whether the purpose for which the land will be used is consistent with the development or land use plan concerning the land?
✓	Has the land committee made its decision within 90 days of receiving the application or within 90 days of receiving any extra information that the applicant was requested to submit to support the application?
✓	If the application is approved, has the land committee sent the applicant an offer in writing signed by the chairperson and clerk of the committee with clearly spelt out terms and conditions?
✓	Has the applicant accepted or refused the offer within 21 days by signing or thumb printing a relevant form?
✓	If the application has been refused, has the land committee given the applicant the reasons in writing?
✓	Has the land committee issued a valid certificate of customary estate that has: signatures of the land committee chairperson and clerk; the applicant's signature; the signature of the District Land Registrar in the district where the land is situated; and the seal of the District Land Registrar?

- 4) Why is the law emphasizing that the land committee should be non-discriminatory on the grounds of sex and disability in land allocation?
 - 5) What obstacles/challenges can the land committee face in implementing the principle of non-discrimination in land allocation in the area? How can we overcome such challenges?
 - 6) What benefits can ensue in the area if the principle of non-discrimination in land allocation is faithfully implemented by the land committee?
- Notes that can be helpful to the discussion**
- A land committee can decide to grant a customary estate in respect of *part of* or *all of* the land that the applicant has applied to be allocated.
 - The land clerk shall record in the minutes of the land committee all decisions that have been made regarding whether or not to allocate land to any applicant.
 - The law provides an opportunity for men and women in the local community to seek permission from the Traditional Authority of their area, through the customary land committee, to register their land for private ownership to ensure the secure possession of the land.
 - All land that is registered and has a title deed is considered secure land while that which does not have a title deed is insecure.

A GRANT OF CUSTOMARY ESTATE SHALL CONTAIN THE FOLLOWING CONDITIONS:

- That the one occupying the land shall use, keep and maintain the land in good state.
- That if the land is for farming, its usage shall follow good land husbandry practices.
- That no buildings shall be erected until all required permissions are obtained.
- That where applicable, the one occupying the land shall pay any rent, fees, charges, taxes and other requirements as may be specified by the land committee.
- That the one occupying the land will comply with all rules, including by-laws, applicable to the land and all lawful orders and directions that the land committee may give relating to the use and occupation of the land.
- That the occupier shall observe all boundary marks.

If an occupier of a customary estate breaks a condition, the land committee needs to establish the seriousness of the violation and if it can be 'ignored,' the situation of the occupier, and whether the violation can be made right. Before taking any action, the land committee should first issue a warning to the occupier and demand that the situation be corrected. The committee can impose any fine that has been prescribed by the Minister responsible Lands through regulations in respect of the violation of conditions.

The power of traditional leaders to control the allocation of customary land among members of their respective communities, including access rights granted to outsiders has been democratized and protected by law.

The land law provides for democratization of land administration to promote transparency and accountability on land matters as provided for in the Constitution of Malawi.

Time: 2 - 3 hours.

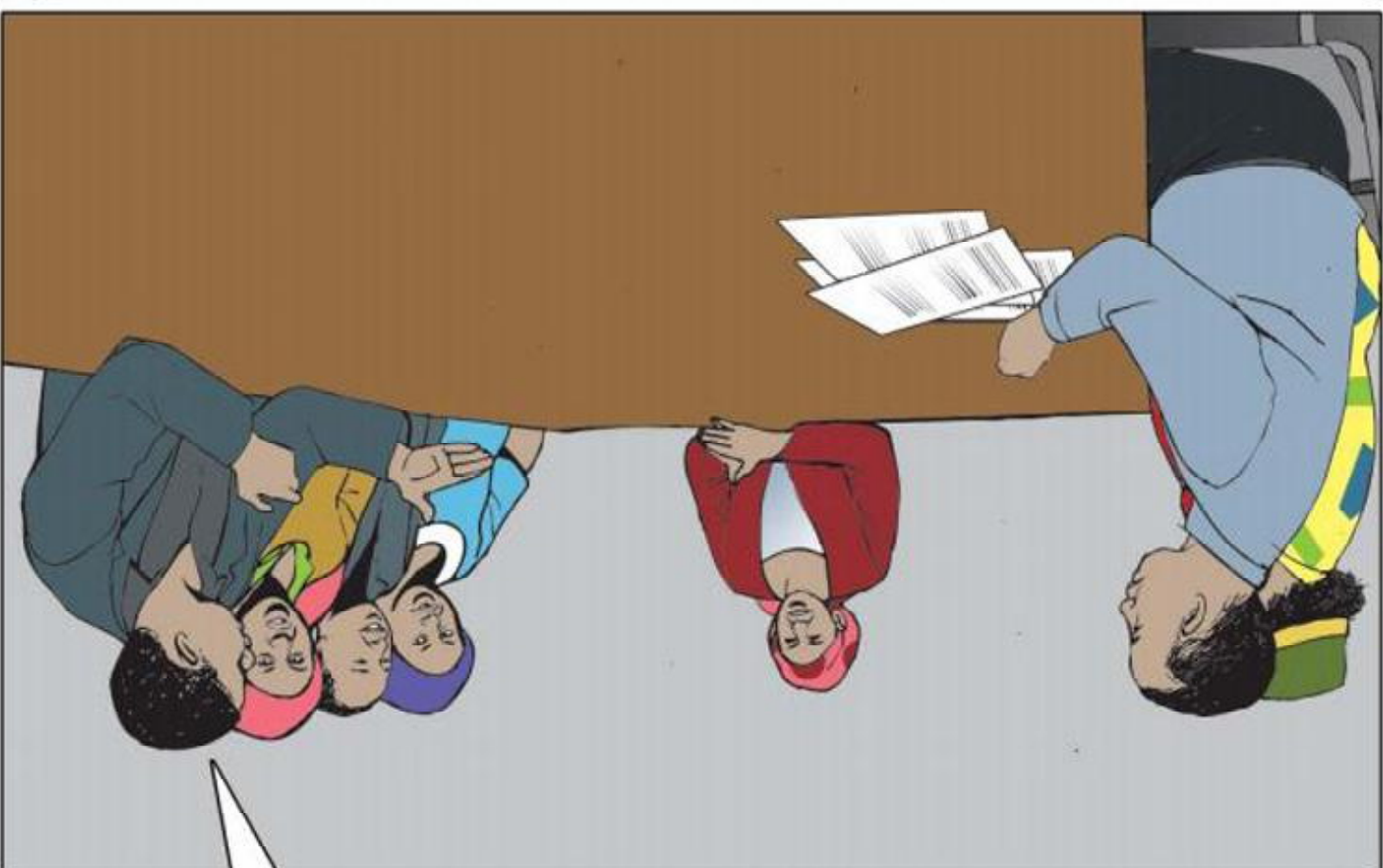
Objective: To clarify what the land committee's function of 'land allocation' entails.

Questions for discussions

- 1) Why is it important for the committee to ensure that customary land is not allocated to individuals that are non-Malawians?
- 2) How can the committee demonstrate to the community that it is fully transparent and accountable in the discharge of its land allocation functions?
- 3) How does discrimination on the grounds of sex and disability in land matters manifest itself in the area?



SO WE SEEM TO AGREE THAT MAI SAMBE AND HER CHILDREN SHOULD BE GRANTED THE CUSTOMARY ESTATE. THE NEXT STEP WILL BE TO SEEK THE T.A.'S APPROVAL. THE T.A. IS REQUIRED NOT TO WITHHOLD HIS APPROVAL UNREASONABLY, SO MOST LIKELY THERE WON'T BE ANY OBJECTION. THEN WE WILL SEND MAI SAMBE AN OFFER IN WRITING SIGNED BY MYSELF AS CHAIRPERSON AND THE CLERK. THE OFFER WILL CLEARLY SPELL OUT TERMS AND CONDITIONS UNDER WHICH THE CUSTOMARY ESTATE WILL BE GRANTED.



I AGREE WITH YOU, BECAUSE THE LAW INTENDS TO ELIMINATE ANY FORM OF DISCRIMINATION IN LAND MATTERS, INCLUDING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES WHO ARE USUALLY SIDELINED IN LAND OWNERSHIP.

THE CUSTOMARY LAND ACT REQUIRES US TO CONSULT WITH THE COMMISSIONER FOR LANDS SO THAT HE/SHE CAN GIVE US GUIDANCE ON HOW TO PROCEED WITH THE APPLICATION OF LAND BY AN ASSOCIATION OR A COMPANY.

THAT IS TRUE, AND THE LAND CLERK WILL HAVE TO FACILITATE THE CONSULTATION WITH THE COMMISSIONER FOR LANDS. THEREFORE WE CAN'T CONSIDER THIS APPLICATION UNTIL WE GET GUIDANCE FROM THE COMMISSIONER.



I WILL SURELY DO THAT. THE NEXT APPLICATION IS FROM MAI SAMBE, THE WIDOW WHOSE HUSBAND DIED 8 MONTHS AGO. SHE IS APPLYING THAT SHE AND HER CHILDREN SHOULD FORMALLY BE GRANTED A CUSTOMARY ESTATE IN THE LAND THAT SHE WAS USING TOGETHER WITH HER HUSBAND.

THIS WILL BE A COMPLICATED CASE, CONSIDERING THAT IN THIS AREA THE CULTURE IS THAT LAND CANNOT BE GIVEN TO A WIDOW, BUT TO MALE CHILDREN.



IT CANNOT BE COMPLICATED IF WE FOLLOW THE CUSTOMARY LAND ACT, WHICH SAYS THAT THE COMMITTEE'S DECISION SHOULD NOT BE INFLUENCED BY ANY DISCRIMINATORY PRACTICES OR ATTITUDES AGAINST ANY APPLICANT. WE ARE SUPPOSED NOT TO TREAT APPLICATIONS FROM WOMEN LESS FAVOURABLY THAN THOSE FROM MEN.



ANOTHER APPLICATION IS FROM ZILIPANO TEA ASSOCIATION, AND ALL ITS MEMBERS ARE MALAWIANS. THE CUSTOMARY LAND ACT PROVIDES THAT AN APPLICATION FROM AN ASSOCIATION, COOPERATIVE OR A COMPANY SHOULD BE SIGNED BY AT LEAST TWO AUTHORIZED MEMBERS. THE APPLICATION HAS SIGNATURES OF THE CHAIRMAN, SECRETARY AND TREASURER SO IT SEEMS TO BE PROPERLY SIGNED.



DON'T WORRY. IF THE COMMITTEE CANNOT CONSIDER AN APPLICATION BECAUSE IT IS NOT COMPLETE AND REQUESTS FOR MORE INFORMATION, THE 90 DAYS ARE COUNTED FROM THE DATE WHEN THE REQUESTED INFORMATION IS SUBMITTED.

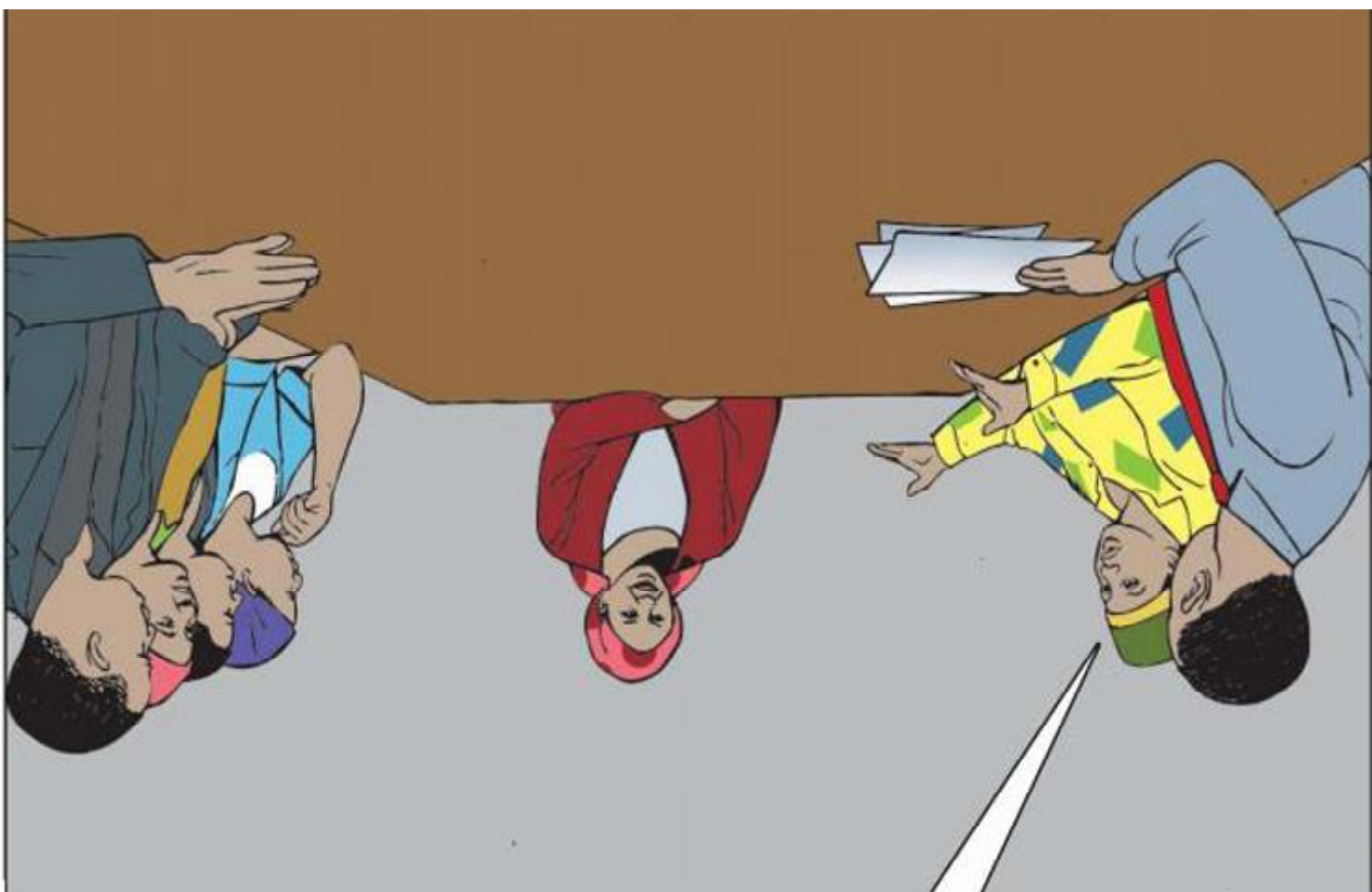


THE CUSTOMARY LAND ACT SAYS THAT WE HAVE TO DECIDE ON ANY APPLICATION WITHIN 90 DAYS. WHAT WILL HAPPEN IF THE BAWI FAMILY DELAYS IN GIVING US THE INFORMATION WE ARE ASKING FOR, AND THE 90 DAYS EXPIRE?

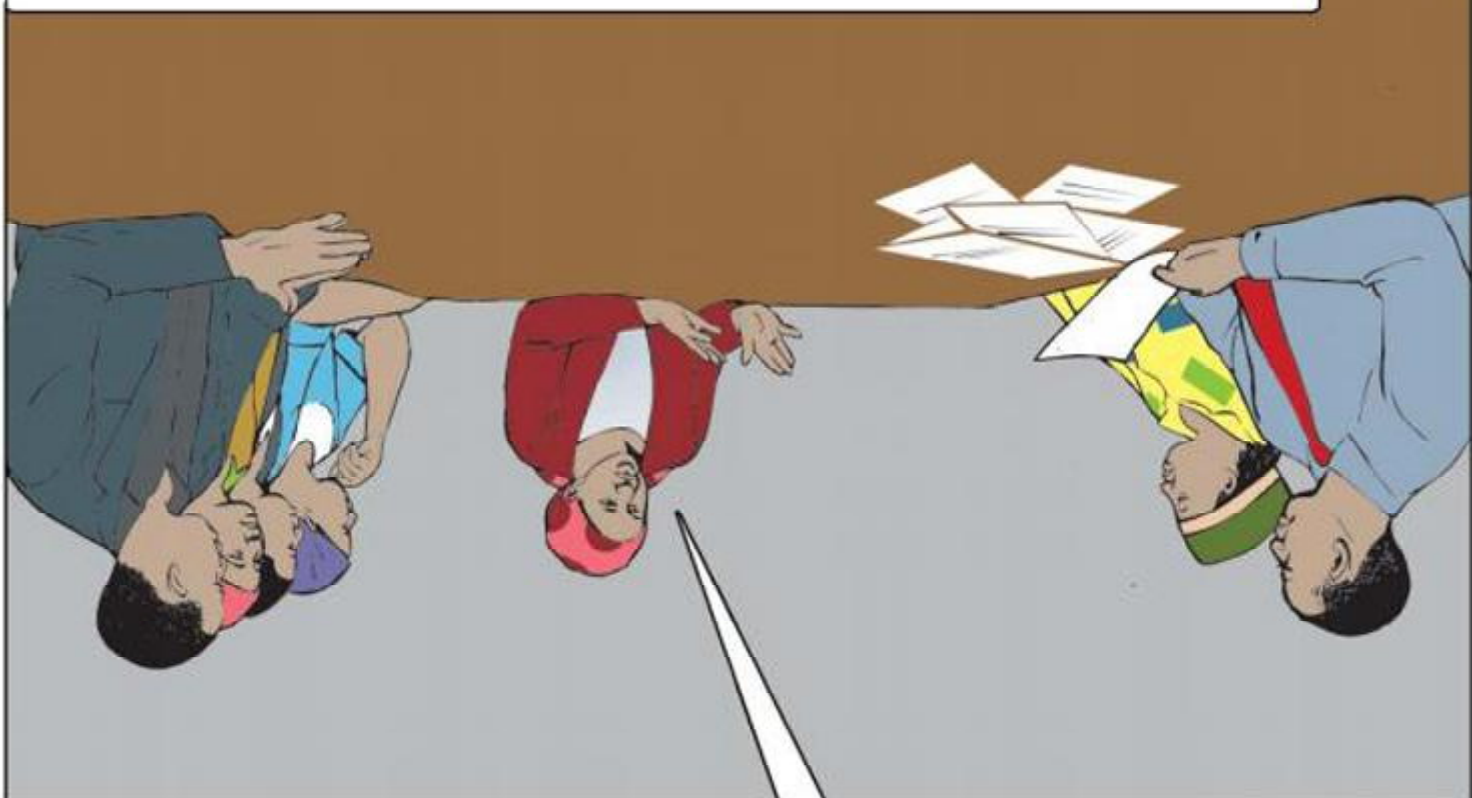


WE WILL HAVE TO SEND BACK THE APPLICATION FORM THEN, SO THAT IT CAN BE SIGNED APPROPRIATELY. ALSO ASK THEM TO GIVE ADEQUATE DETAILS REGARDING ALL FAMILY MEMBERS THAT SHOULD BE ON THE CERTIFICATE FOR CUSTOMARY ESTATE.

THE NEXT APPLICATION IS FROM THE BAWI FAMILY, WHO ARE APPLYING AS A FAMILY UNIT. UNFORTUNATELY, THE APPLICATION IS ONLY SIGNED BY THE HEAD OF HOUSEHOLD, ALTHOUGH THE CUSTOMARY LAND ACT SAYS THAT SUCH AN APPLICATION SHOULD BE SIGNED BY AT LEAST TWO PERSONS WITHIN THE FAMILY UNIT. THE FULL NAMES OF THE CHILDREN ARE ALSO NOT PROVIDED.



WE ALL AGREE WITH THAT OBSERVATION. IN ACCORDANCE WITH THE LAW, WE WILL WRITE MR DOS SANTOS TO GIVE HIM THE REASON FOR REJECTING HIS APPLICATION. WHO IS THE NEXT APPLICANT?



YES WE KNOW MR DOS SANTOS VERY WELL. HOWEVER, WE CAN'T CONSIDER HIS APPLICATION BECAUSE WE CAN ONLY ALLOCATE A CUSTOMARY ESTATE TO: A MALAWIAN CITIZEN OR FAMILY OF CITIZENS OF MALAWI; A GROUP OF TWO OR MORE CITIZENS OF MALAWI; AND A PARTNERSHIP OR A COMPANY WHICH HAS MALAWIANS AS THE MAJORITY OF ITS SHAREHOLDERS.

Activity 4: Land allocation functions of a customary land committee

THE COMMITTEE HAS SEVERAL APPLICATIONS THAT IT HAS TO CONSIDER TODAY FOR THE GRANT OF CUSTOMARY ESTATES. OUR CLERK, TELL US ABOUT THE FIRST APPLICATION.



THIS APPLICATION IS FROM MR ABUDAH DOS ANTOS. HE IS A MOZAMBICAN BUT LIVES AT THE BORDER JUST ON THE OTHER SIDE OF THE ROAD. I'M SURE WE ALL KNOW HIM AS MOST OF THE VILLAGERS USUALLY BUY FROM HIS SHOP.



Time: 2 hours.

Objective: To understand what the 'the management of customary land' by a land committee means.

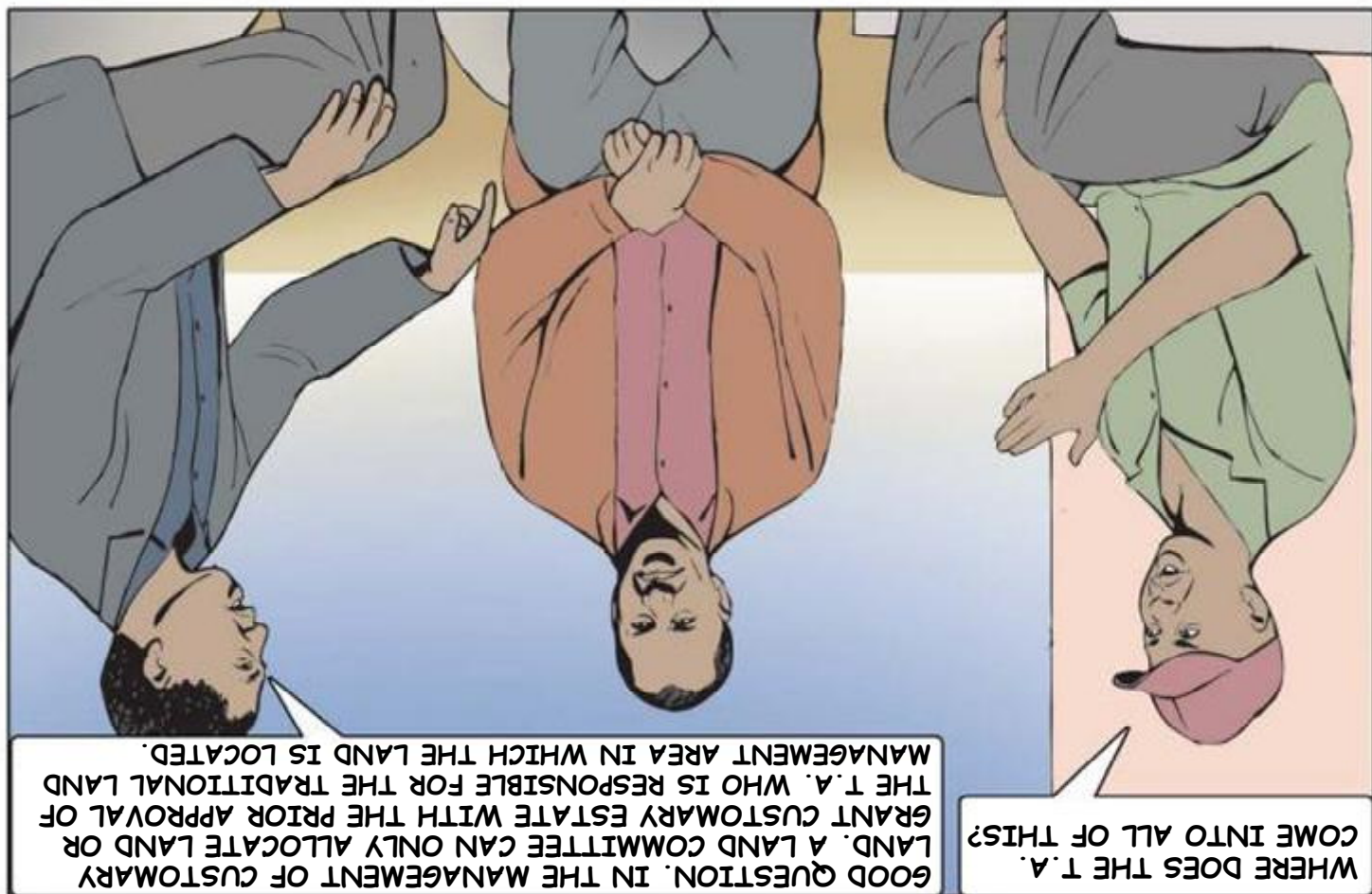
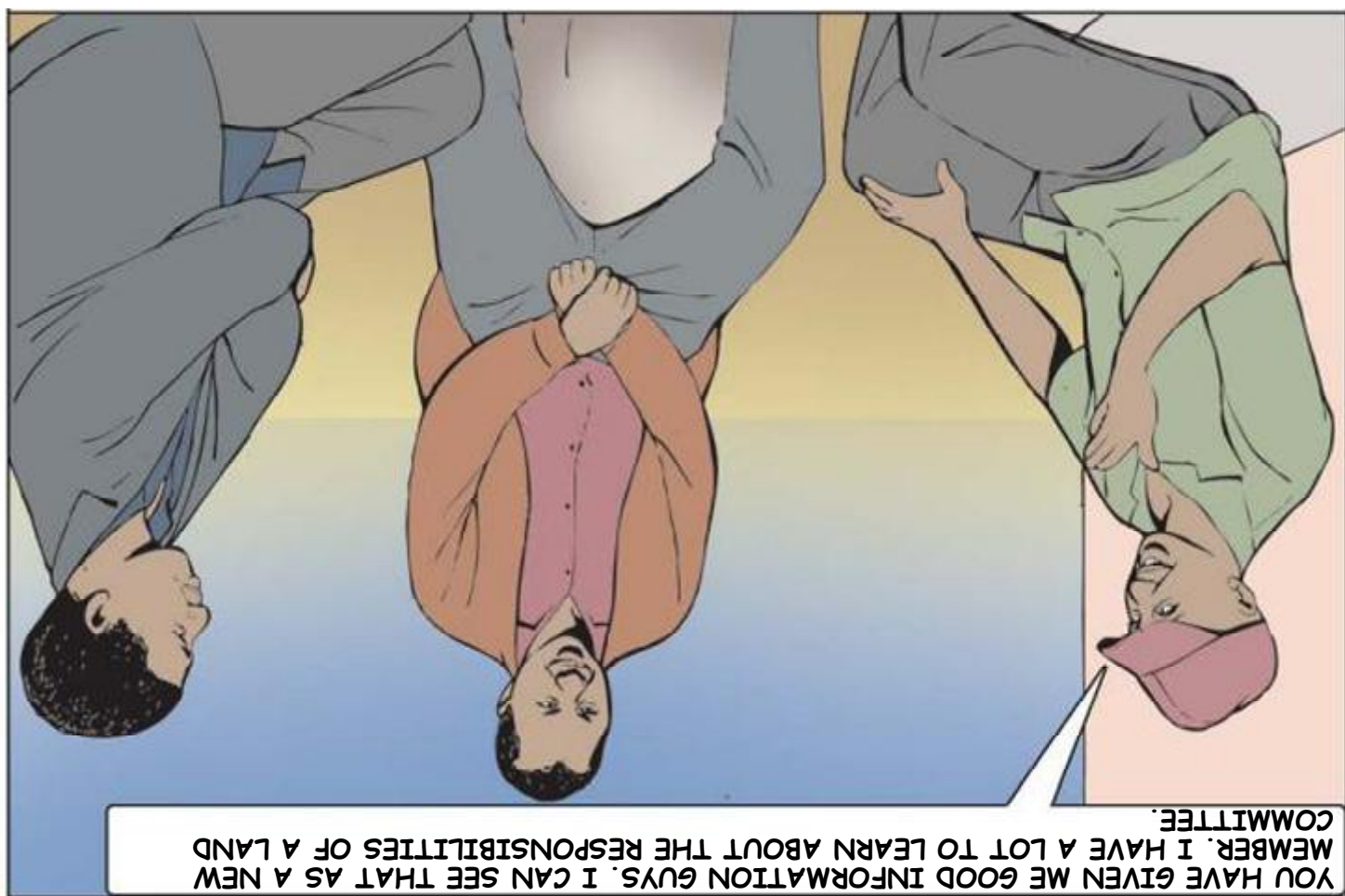
Questions for discussions

- 1) Why is it important for a trustee (i.e. customary land committee) to act in the best interest of beneficiaries (community members)?
- 2) Why do you think community members are regarded as the beneficiaries of customary land?
- 3) How can we ensure that as a land committee, we have knowledge about sustainable land management (as well as the ways in which men and women differently compromise or promote sustainable land management) so that we should apply this to our functions?
- 4) What steps should we take to ensure that we are always performing our land management functions according to the law?
- 5) Which public authorities in the area do we have to work with for our role in the management of customary land to be discharged appropriately?
- 6) How best can we work with the Council in order to solicit appropriate advice and guidance?

Notes that can be helpful to the discussion

- The Customary Land Act provides that a land committee shall manage the customary land under its territory as if the committee were a trustee of the customary land, and the residents in the area were beneficiaries.
- A trustee is a legal term that refers to any person who holds property or a position of responsibility for the benefit of another (a beneficiary). This beneficiary is the owner of the property. The trustee has a duty to distribute property (or in the case of the customary land committee, to manage land in accordance with specific legal requirements.
- The customary land committee is empowered to carry out the function of allocation, adjudication and management of customary land in a Traditional Land Management Area. Where necessary, the land committee should seek advice and guidance concerning the management of land from the local government authority (Council) that is responsible for the area. The Council can also give the guidance and advice on its own. The committee has an obligation to comply with such advice and guidance, which will usually be provided through the land clerk.
- The Minister responsible for lands will prescribe a procedure that land committees should follow when conducting their business.
- The land committee is supposed to keep minutes of its meetings.

The Customary Land Act provides for democratization of land administration and consultations on land transfers to promote transparency and accountability on land matters. The law formalizes the administrative role of traditional leaders on the allocation of rights on customary land.



THAT'S RIGHT. THEREFORE, WE SHOULD ALWAYS UPHOLD OUR RESPONSIBILITY TO ENSURE THAT CUSTOMARY LAND IS NOT BEING DEALT WITH IN WAYS THAT THREATEN THE SURROUNDING NATURAL RESOURCES AND THE ENVIRONMENT. TO DO THIS EFFECTIVELY, WE ALSO NEED KNOWLEDGE OF HOW MEN AND WOMEN DIFFERENTLY COMPROMISE OR PROMOTE SUSTAINABLE LAND MANAGEMENT.

ADDITIONALLY, THE MANAGEMENT OF CUSTOMARY LAND IMPLIES THAT AS A COMMITTEE, WE SHOULD KNOW THE PUBLIC AUTHORITIES THAT HAVE RESPONSIBILITY OVER ANY MATTER IN THE AREA WHERE THE CUSTOMARY LAND IS LOCATED. WE SHOULD CONSULT THEM AND CONSIDER THEIR VIEWS, INCLUDING OBEYING ANY DECISIONS AND ORDERS THAT THEY CAN MAKE CONCERNING THE LAND.

SIMILARLY, WE ARE EXPECTED TO CONSULT THE COUNCIL THAT HAS AUTHORITY OVER THE AREA IN WHICH THE CUSTOMARY LAND IS SITUATED. THE LAND COMMITTEE HAS AN OBLIGATION TO COMPLY WITH THE COUNCIL'S ADVICE AND GUIDANCE.

FROM TIME TO TIME, THE COMMISSIONER FOR LANDS MAY ALSO GIVE ADVICE REGARDING THE MANAGEMENT OF CUSTOMARY LAND, AND WE HAVE TO COMPLY WITH SUCH ADVICE.



THE BENEFICIARIES (COMMUNITY MEMBERS) ARE THE ACTUAL OWNERS OF THE LAND. THEREFORE AS TRUSTEE, THE LAND COMMITTEE HAS A LEGAL DUTY TO ONLY DO WHAT THE LAW SAYS, AND TO ACT ONLY IN THE BEST INTERESTS OF THE BENEFICIARIES.



An illustration of three men in a discussion. On the left, a man with a beard and a grey turban looks towards the center. In the middle, a man with a beard and a pink turban, wearing an orange shirt, is gesturing with his right hand. On the right, a man with a beard and a green turban, wearing a green shirt, is gesturing with his left hand. They are all looking at each other in a conversational manner.

I CAN ALREADY APPRECIATE THAT IF WE START ACTING GREEDILY AND AMASS LAND FOR OURSELVES, THAT WOULD DEFINITELY NOT BE IN THE BEST INTEREST OF THE COMMUNITY MEMBERS. SO ACCORDING TO THIS LAW, WHAT DOES THE MANAGEMENT OF LAND BY A CUSTOMARY LAND COMMITTEE ENTAIL?

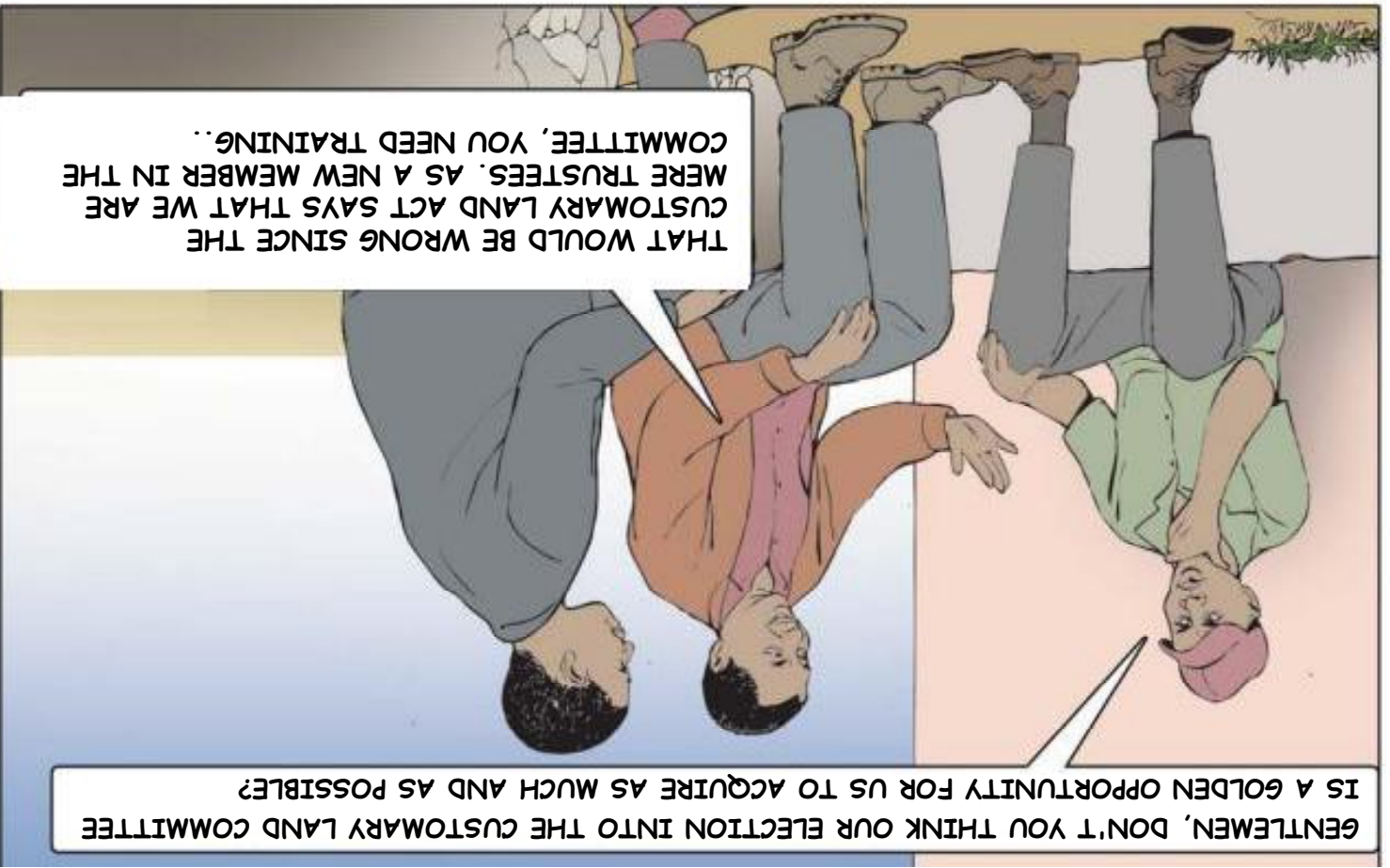
THE CUSTOMARY LAND ACT HAS STRESSED SEVERAL THINGS THAT WE NEED TO TAKE INTO ACCOUNT IN THE MANAGEMENT OF CUSTOMARY LAND. FOR EXAMPLE, WE NEED TO ALWAYS ENSURE THAT IMMEDIATE HUMAN NEEDS RELATED TO LAND ARE NOT COMPROMISING THE NEED TO CONSERVE NATURAL RESOURCES AND THE ENVIRONMENT IN THE LONG TERM.



An illustration of three men in a discussion. On the left, a man with a beard and a grey turban looks towards the center. In the middle, a man with a beard and a pink turban, wearing an orange shirt, is gesturing with his right hand. On the right, a man with a beard and a green turban, wearing a green shirt, is gesturing with his left hand. They are all looking at each other in a conversational manner.

THAT SOUNDS IMPORTANT BECAUSE SOMETIMES WE PEOPLE FORGET THAT POOR LAND USE PRACTICES, AS WELL AS THE DEGRADATION OF NATURAL RESOURCES AND THE ENVIRONMENT NEGATIVELY AFFECT OUR OWN LIVES AND DEVELOPMENT. USUALLY IT IS WOMEN AND OTHER MARGINALIZED GROUPS THAT SUFFER.

Activity 3: What does it mean that 'the land committee is responsible for the management of all customary land in a traditional land management area'?



- The land clerk is appointed by the local government authority (e.g. District Council, Municipal Council, City Council or Town Council) that is responsible for the Traditional Land Management Area.
- Customary land committees should create an enabling environment for land clerks to perform their functions. For example, an enabling environment for female land clerks implies ensuring that they are working in an environment that is free from gender stereotypes and any type of harassment and abuse (including sexual).

HOW MUCH WILL WE HAVE TO PAY YOU? DOES THE COMMITTEE HAVE THE MONEY CHAIRPERSON?

I AM EMPLOYED BY THE DISTRICT COUNCIL THAT IS RESPONSIBLE FOR THIS AREA, SO THEY PAY MY SALARY. BUT I WILL JUST NEED YOUR FULL SUPPORT SO THAT TOGETHER, WE CAN DO A WONDERFUL JOB OF ENSURING THAT BOTH WOMEN AND MEN IN THIS AREA HAVE SECURE LAND AND ARE USING IT IN ACCORDANCE TO THE LAW.



The appointment of land clerks to serve on customary land committees is one way of strengthening the orderly administration of customary land, and ensuring that customary land committees succeed in their responsibilities.

A Traditional Land Management Area means an area of land that is demarcated and falling under the territory of a specific Traditional Authority. The T.A. shall have a certificate to show that the land is under his/her territory.

A land committee shall not approve the registration of customary land as private land (customary estate) without the approval of the responsible T.A. and the T.A. shall not unreasonably withhold such approval.

Time: 1 -2 hours.

Objective: To have a common understanding of the roles of a land clerk.

Questions for discussions

- 1) In your own words, what do you understand the roles of the land clerk to be?
- 2) In what ways are these roles helpful to your functions as a customary land committee?
- 3) How can we ensure that we are making the best use of the land clerk in order to be a successful customary land committee?
- 4) How can we create a positive environment for the land clerk to work in, especially if she is a woman?

Notes that can be helpful to the discussion

- The Customary Land Act provides that each Traditional Land Management Area will have a land clerk to serve as a secretary to any customary land committee in the area.

WHAT IF WE NEED ANY ADVICE IN THE PERFORMANCE OF OUR DUTIES AS A COMMITTEE. CAN WE ASK YOU? AS YOU KNOW WE ARE ALL NEW AT THIS JOB AND STILL NOT CONFIDENT OF MANY THINGS.



YES YOU CAN ASK ME BECAUSE MY ROLE INCLUDES GIVING TECHNICAL ADVICE TO YOU AS A CUSTOMARY LAND COMMITTEE. I AM HERE TO HELP YOU TO FULLY COMPLY WITH WHAT THE CUSTOMARY LAND ACT IS EXPECTING YOU TO DO.

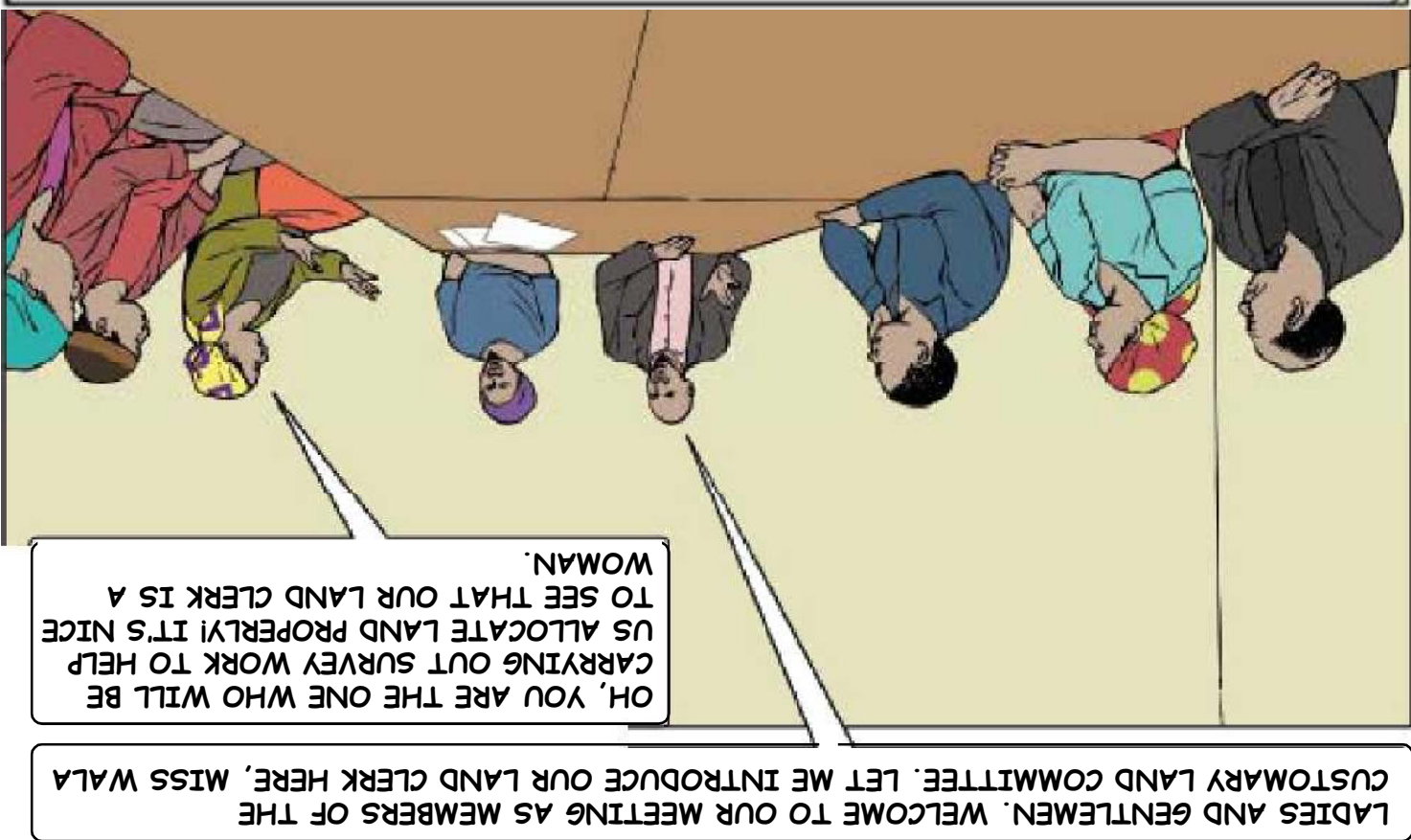
APART FROM ME, THIS LAW ALSO EXPECTS THE COMMISSIONER FOR LANDS AND THE LOCAL GOVERNMENT AUTHORITY RESPONSIBLE FOR THIS AREA TO GIVE YOU ADVICE AND GUIDANCE REGARDING THE PROPER MANAGEMENT OF CUSTOMARY LAND ALL WE HAVE TO DO IS TO FOLLOW THAT ADVICE CLOSELY AND WE WILL PERFORM WELL.

SO YOU HAVE A LOT OF KNOWLEDGE REGARDING LAND MANAGEMENT? YOU WILL BE A GOOD ROLE MODEL TO OUR DAUGHTERS.



I AM TRAINED IN LAND TENURE MANAGEMENT ISSUES, BASIC MAP PREPARATION, AS WELL AS LAND USE PLANNING. IN ORDER TO UNDERGO THIS TRAINING, I HAD TO FIRST OBTAIN A MALAWI SCHOOL CERTIFICATE OF EDUCATION (MSCE). YOUR DAUGHTERS CAN INDEED BECOME LIKE ME IF THEY WORK HARD IN SCHOOL.

Activity 2: Working with the land clerk



THAT'S RIGHT. APART FROM CARRYING OUT SURVEY WORK, I AM ALSO RESPONSIBLE FOR:

- ✓ PREPARING BASIC MAPS FOR THIS TRADITIONAL LAND MANAGEMENT AREA;
- ✓ RECORDING IN A REGISTER ALL THE LAND TRANSACTIONS THAT WILL TAKE PLACE IN THIS TRADITIONAL LAND MANAGEMENT AREA;
- ✓ PREPARING LAND USE PLANS.

LET US ALL LISTEN TO THESE ROLES VERY CAREFULLY LADIES AND GENTLEMEN SO THAT WE CAN BE ABLE TO ENSURE THAT THE LAND CLERK IS PERFORMING ALL HER FUNCTIONS WITH OUR SUPPORT.



4) In what ways will we create an enabling environment for female committee members to be true decision makers along with their male colleagues?

The following are some of the points to emphasise:

- Women should not be present in customary land committees just for the sake of fulfilling the law. All efforts should be made to ensure that female committee members are fully participating in decision-making, and that their voice is heard. Male committee members should particularly respect the opinion of female committee members, and ensure that the women are treated as equals.
- Ways to empower female committee members include ensuring that they are routinely part of trainings that are targeting land committee members or women leaders; that they have mentors (other women in leadership positions); and that the chairperson purposefully solicits each woman's opinion on an issue, and considers such opinion when making a decision.
- Corrupt practices by a member of a customary land committee are not tolerated, and can be a basis of dismissal of the concerned member from the committee.
- Customary land committee members should be aware of the need to declare a conflict of interest, and excuse themselves from a meeting that is discussing a matter concerning their interest in land. Failure to do so can also be a ground for dismissal.
- A member of customary land committee shall serve in the position for three years. He/she can be re-elected for another three years. A member of a customary land office shall vacate office if he/she:
 - resigns.
 - is convicted of an offence involving dishonesty or morally questionable behavior.
 - becomes incapable of performing his/her duties due to any disability; or
 - is dismissed for failing to declare a conflict of interest in a matter involving the member or his/her immediate family member that was being handled by the committee.

Questions for discussions

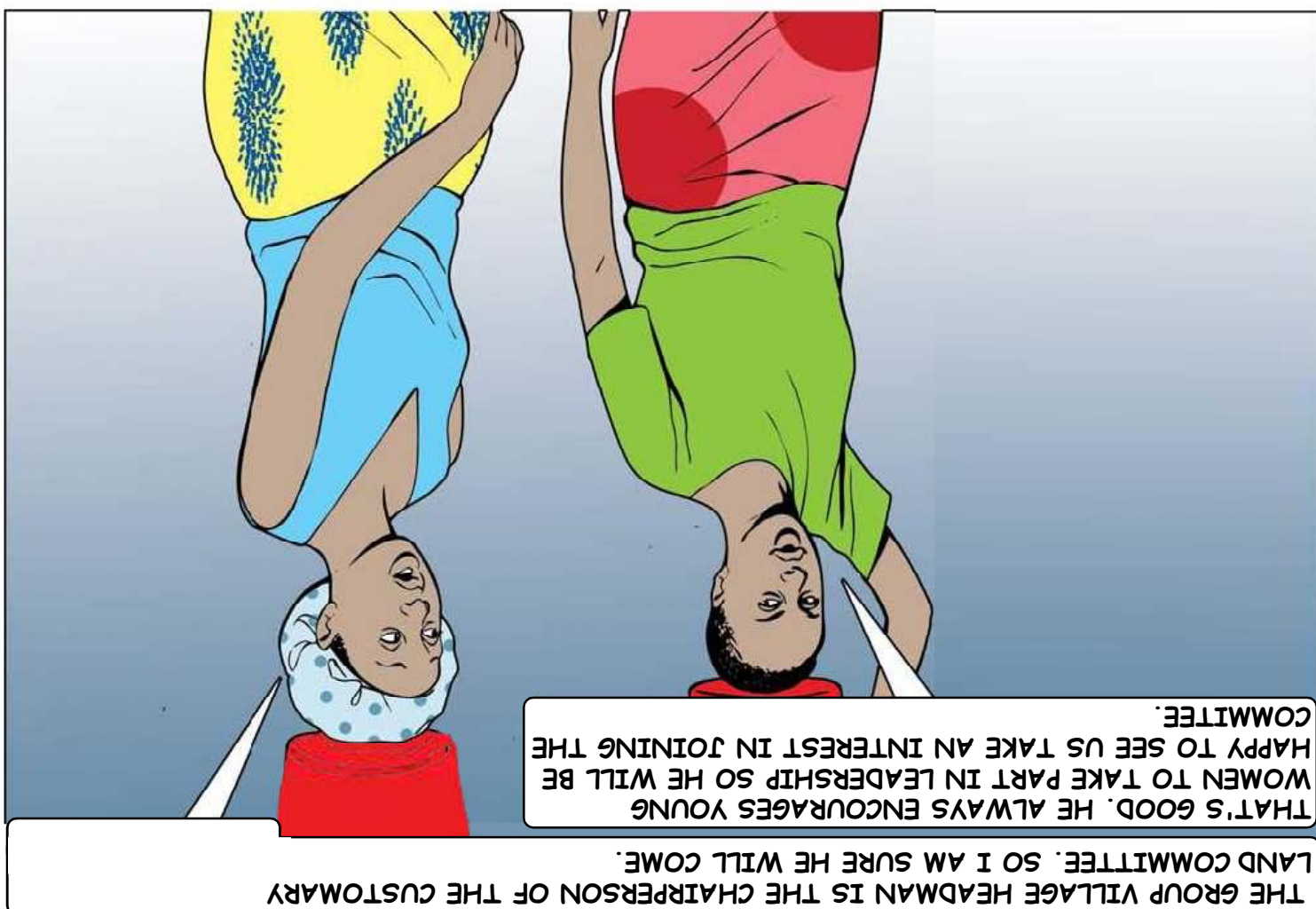
- 1) Why do we think the law says a member should serve for a maximum period of six years?
 - 2) How can we avoid falling into situations that would require us to be removed from the committee involuntarily?
 - 3) Why is it important that women who are committee members should actively participate in decision making?
- Time:** 1 - 2 hours.
- Objective:** To clarify issues concerning the tenure of office and removal from office of customary land committee members.

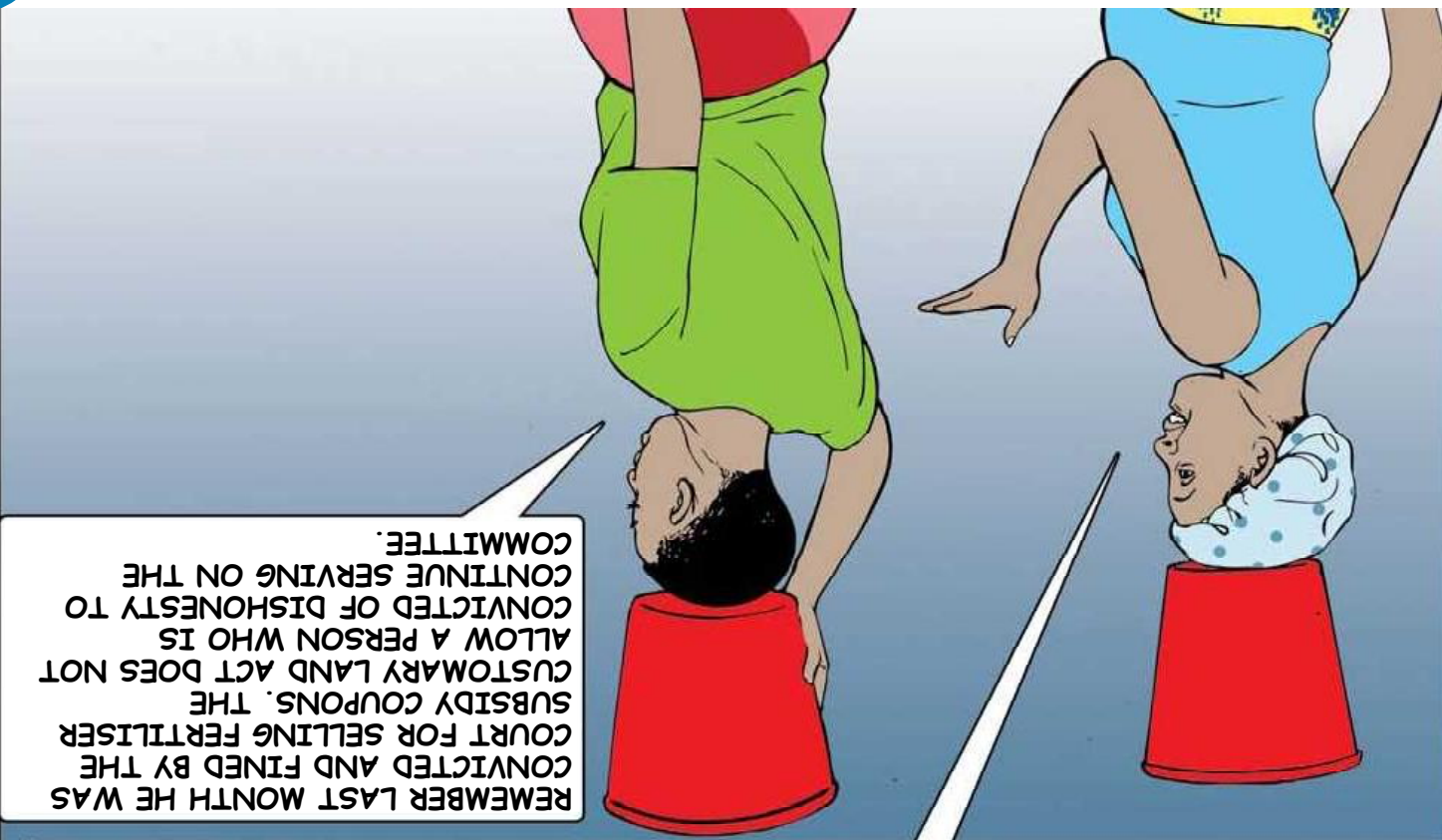
The law formalises the administrative role of Traditional leaders on the allocation of rights on customary land.

The chief remains very important in land administration because the Customary Land Act provides that the Group Village Headman shall be the chairperson of the customary land committee.

He will work with six committee members, who shall be elected by and from the community.

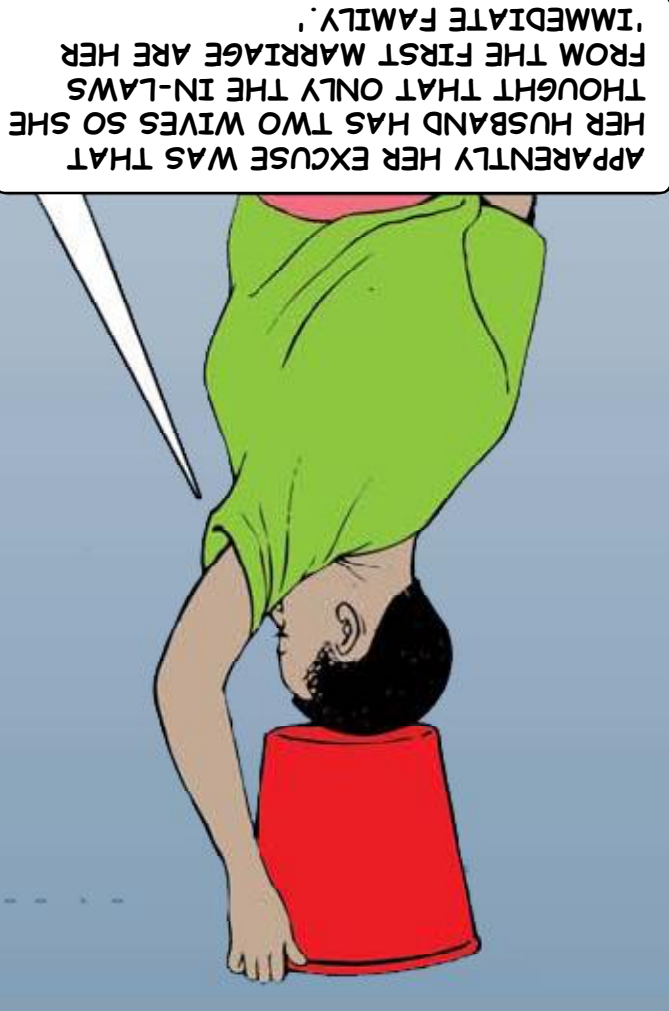
At least three of the committee members shall be women.





REMEMBER LAST MONTH HE WAS CONVICTED AND FINED BY THE COURT FOR SELLING FERTILISER SUBSIDY COUPONS. THE CUSTOMARY LAND ACT DOES NOT ALLOW A PERSON WHO IS CONVICTED OF DISHONESTY TO CONTINUE SERVING ON THE COMMITTEE.

MMHM... THAT DOESN'T SOUND LIKE A VALID EXCUSE. I REMEMBER HEARING THAT WHERE A COMMITTEE MEMBER HAS MORE THAN ONE SPOUSE. THEN HIS OR HER 'IMMEDIATE FAMILY' INCLUDES ALL SPOUSES AND ALL IN-LAWS. WHAT IS THE ISSUE WITH MR KUTHA?



APPARENTLY HER EXCUSE WAS THAT HER HUSBAND HAS TWO WIVES SO SHE THOUGHT THAT ONLY THE IN-LAWS FROM THE FIRST MARRIAGE ARE HER 'IMMEDIATE FAMILY.'

I WONDER TOO BECAUSE IT WAS EXPLAINED VERY WELL THAT IMMEDIATE FAMILY INCLUDES A COMMITTEE MEMBER'S FATHER, MOTHER, FATHER-IN-LAW, MOTHER-IN-LAW, SON, DAUGHTER, DAUGHTER-IN-LAW, SON-IN-LAW, SPOUSE, BROTHER, SISTER, BROTHER-IN-LAW, SISTER-IN-LAW, NEPHEW OR NIECE.

Activity 1: Qualifications for customary land committee members

TOMORROW WE SHOULD REMEMBER TO GO TO A MEETING TO ELECT CUSTOMARY LAND COMMITTEE MEMBERS. WE SHOULD LOBBY FOR A WOMAN OF OUR AGE TO BE ELECTED INTO THE COMMITTEE TOO. WE SHOULDN'T JUST LEAVE OLD WOMEN TO TAKE UP POSITIONS.

I FOR ONE WOULD LIKE TO BE IN THE COMMITTEE. BUT WE ONLY ELECTED COMMITTEE MEMBERS 18 MONTHS AGO-ISN'T THEIR TERM OF OFFICE THREE YEARS?



APPARENTLY MRS BENGO AND MR KUTHA HAVE BEEN REMOVED FROM THE COMMITTEE. MRS BENGO WAS REMOVED BECAUSE SHE FAILED TO DECLARE A CONFLICT OF INTEREST AND STILL ATTENDED A MEETING WHERE THEY WERE DISCUSSING LAND IN WHICH HER BROTHER-IN-LAW HAS AN INTEREST.

WHY DID SHE DO THAT? WE ALL HEARD CLEARLY AT THE TIME THE COMMITTEE WAS BEING SELECTED THAT A COMMITTEE MEMBER IS SUPPOSED TO DECLARE HIS OR HER INTEREST AND NOT TAKE PART IN A MEETING THAT IS DISCUSSING ADVICE, ASSISTANCE OR A DECISION CONCERNING HIS OR HER IMMEDIATE FAMILY MEMBER.



Tips for the facilitator

1. Always emphasise on the key messages that appear in bold at the end of each activity.
2. The time frames under each activity are mere suggestions. Ensure that the participants have fully understood the topic before moving to the next activity.
3. The illustrative activities are meant to inspire ideas for role-plays and other methods of participatory engagement with the participants. Feel free to adapt the scenes accordingly depending on your setting.
4. Always introduce the topics in a constructive and non-confrontational manner, making it clear that the agenda is to ensure that the committee achieves its highest potential by valuing and promoting women's land rights. Manage all tensions sensitively.
5. Constantly take notes of the women's and men's perspectives to the questions that are asked at the end of each activity. Ensure that the committees arrive at concrete action points to facilitate change, including responsible persons. Follow up on such action points.
6. Routinely create a conducive environment for each participant to be actively involved in all discussions.

Basic information about land laws

Customary Land Act of 2016	Is a new law that allows for the creation of customary estates, so that community members can get a legal title to their customary land and thus have more secure land rights.	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.	Land Act of 2016	This is the 'mother' law that contains provisions for land administration and management, and for all matters related to land in Malawi. The Land Act has placed land into two categories: <i>public and private</i> .	Public land	Means land held in trust for the people of Malawi and managed by government, a local government authority or a Traditional Authority; e.g. government buildings, schools, hospitals, public infrastructure; national parks; forest reserves; recreation areas; historic and cultural sites; land vested in government as a result of uncertain ownership or abandonment; unallocated and communal land within a Traditional Land Management Area.	Private land	Is all land that is owned, held or occupied under a freehold title, leasehold title or as a customary estate and is registered as private land under the Registered Land Act.	Freehold land	Is an estate in land that is held in perpetuity.	Leasehold land	Is land held under an agreement for a lease.	Customary estate	Is customary land which is owned, held or occupied as private land within a Traditional Land Management Area and is registered under the Registered Land Act.	Customary Land	Is land that is used for the benefit of the community as a whole, and includes unallocated land within the boundaries of a Traditional Land Management Area.	Traditional Land Management Area	Means an area of land that is demarcated and falling under the territory of a specific Traditional Authority. The T.A. shall have a certificate to show that the land is under his/her territory.
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<p>Section 29: persons that can surrender a customary estate, and restrictions related to surrendering land</p> <p>Section 29 (1): surrender of a customary estate to be invalid if done to deny a woman or dependants from occupying land</p> <p>Section 30: list of people to be prioritised in being offered a customary estate that has been surrendered</p> <p>Section 35: an occupier of land to apply to customary land tribunal for relief against a decision by/action of the land committee</p> <p>Section 44: people who are eligible to serve in a customary land tribunal</p> <p>Section 46: people who are eligible to serve in a district land tribunal</p>	
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	<p>Section 22 (2) (b): land committee's decision on any application not to be discriminatory on the basis of sex, disability or any ground.</p> <p>Sections 22 (5): land committee to give reasons for refusing grant a customary estate in writing.</p> <p>Section 23 (1): an offer of a customary estate to specify conditions on which the customary estate will be granted.</p> <p>Section 27: list of conditions that a committee can attach to a grant of a customary estate.</p>	<p>Activity 5: How can the land committee perform its land adjudication function?</p> <p>Section 36: grant of customary estate not to be made unless boundaries and interests in land are adjudicated</p> <p>Section 39: what the adjudication notice to the community should contain</p> <p>Sections 41 (3): a person aggrieved with adjudication can appeal to the customary land tribunal</p> <p>Sections 42: one can apply to the land committee for spot adjudication</p> <p>Section 43 (1): guiding principles of adjudication (including those who are entitled continue holding customary land as a customary estate)</p> <p>Sections 43(1) (b): a group of persons occupying land to be entitled to customary estate as a group if they qualify</p> <p>Sections 43(1) (c): unauthorised occupiers to be permitted to remain on land for 12 months after adjudication</p> <p>Section 43(1) (e): appropriate land can be declared as communal land</p>	<p>Activity 6: Role of the Customary Land Tribunal</p> <p>Section 44: customary land tribunal and its composition, criteria for nomination, disqualification, tenure and quorum</p> <p>Section 49: guiding principles for land tribunals</p>	<p>Activity 7: Surrender and sale of customary estates & dispute handling</p> <p>Section 28 (1): customary land committee to approve all sales of customary land</p> <p>Section 28 (2): restrictions on disposing of/selling a customary estate within the first 5 years of obtaining a customary estate certificate</p> <p>Section 28 (4): written consent of all family members named in the certificate required when selling land</p>
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Activity	Legal sources in the Customary Land Act			
Activity 1 : Qualifications for customary land committee members	<p>Section 5 (2) (a): Group Village Headperson to preside over land committee.</p> <p>Section 5 (4): reasons that can make a land committee member vacate office.</p> <p>Section 16: conflict of interest of a land committee member.</p> <p>Section 16 (3): definition of 'immediate family'</p>			
Activity 2 : Working with the land clerk	<p>Section 8: role of the land clerk.</p> <p>Section 9: local government to give guidance and advice to land committees.</p>			
Activity 3 : What does it mean that 'the land committee is responsible for the management of all customary land in a traditional land management area?'	<p>Section 6 (1): land committee to manage land as trustee.</p> <p>Section 6 (2): what 'management of land' by the land committee entails.</p> <p>Section 6 (3): customary estate to be allocated with prior approval of Traditional Authority (TA).</p>			
Activity 4 : Land allocation functions of a customary land committee	<p>Section 6 (3): customary estate to be allocated with prior approval of TA, and TA not to withhold approval unreasonably.</p> <p>Section 20: categories of persons who can be allocated a customary estate.</p> <p>Section 21 (ii): at least two people to sign an application for a customary estate by a family unit.</p> <p>Section 21 (iv): at least two authorised officers to sign an application for a customary estate by a cooperative or body.</p> <p>Section 21 (iv): land committee can ask for more information from applicant before making a decision.</p> <p>Section 22 (1): application for a customary estate to be decided within 90 days.</p> <p>Section 22 (2) (b): land committee to be guided by the Commissioner for Lands in the case of applications by an organisation or body.</p>			

Broad objectives

The activities in this manual are meant to support efforts to familiarise customary land committees with their functions as stipulated under the Customary Land Act of 2016.

In keeping with the spirit of the project being implemented by Konrad Adenauer Stiftung in Mzimba and Zomba districts, the customary land committee orientation materials are designed to:

1. Strengthen knowledge about the role of land committees.
2. Equip customary land committees with knowledge and skills to discharge their functions from social and gender perspectives.

Learning objectives

By the end of all the activities, targeted members of customary land committees will be able to:

1. Understand factors that make one eligible or ineligible to serve in a land committee.
2. Explain the role of the land clerk and how a land committee can effectively work with such clerk.
3. Appreciate the meaning of the responsibility of land committee 'to manage all customary land in a Traditional Land Management Area.'
4. Describe what is involved in the land allocation function of a customary land committee.
5. Articulate how a land committee can perform its land adjudication function.
6. Explain the situations that may demand the involvement of the district land tribunal in order to resolve land related disputes.

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Gender responsive land governance under the Customary Land Act: the role of customary land structures in Malawi

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