

# Written Customary Land Rights in Malawi: Selected Research Findings

*This brief provides an overview of key findings from the research article “Land and Legibility: When do Citizens Expect Secure Property Rights in Weak States?” published in the [American Political Science Review](#) (2022) by Karen E. Ferree, Lauren Honig, Ellen Lust, and Melanie Phillips. This brief was compiled with assistance from Margaret Leahy.*

**Introduction** Secure access to land is of critical importance to Malawian citizens, as 85% percent of the country’s population is engaged in agriculture (National Statistical Office 2012). Malawians rely on a variety of different strategies to improve their tenure security, including land titles obtained from the state and other documentation created and signed by traditional leaders. In this research, we examine the usage of such traditional land documents. We show that they are a prevalent form of documentation for landowners throughout the country and that survey respondents perceived them to be no less valuable or secure than state land titles. These responses suggest that written evidence of one’s land rights (known as legibility) can be a strategic resource for citizens, regardless of whether these documents come from traditional or state leaders.

Our findings draw on insights shared through 3 large surveys. First is our phone survey from August to October of 2020 of 4,893 respondents in nearly every district of Malawi. Second is the 2019 Local Governance Performance Index (LGPI) survey, which included 6,754 landowners within a greater Lilongwe sample of communities within 50 km of the city and a border sample of communities within 100 km of the Zambia border. Third, we also draw on the nationally-representative 2016 LGPI survey, with 8,100 respondents in the North, Central, and South regions. These 3 surveys asked respondents questions about land usage and local governance issues. They were completed in partnership with the Institute for Public Opinion and Research (IPOR) and passed the ethical approvals of University of Malawi Institutional Review Board. The research highlights 7 key findings, summarized below with greater detail in the following pages.

## **Summary of Key Findings** (details in pages following)

- 1) Many Malawians rely on written property rights from chiefs.
- 2) The typical respondent with a traditional land document purchased their land and is from the majority ethnic group in their community.
- 3) Land disputes were the most common type of disputes within the sampled communities.
- 4) The majority of respondents relied on traditional leaders for land dispute resolution.
- 5) Land titles are considered similarly valuable and secure regardless of whether provided by a traditional leader or the government.
- 6) Respondents with a higher level of education placed a higher value on land documentation.
- 7) Respondents perceived that written land rights were most beneficial for women and for those living in communities with low social capital.

**Conclusions** Debates over land titling have often compared unwritten customary rights to written state titles. Yet in practice, citizens in Malawi and Zambia (as well as other African countries) also rely on written documents provided by chiefs. Our results show that these forms of traditional land documents require much further consideration and study by both policymakers and academic researchers. There is strong evidence that Malawians prize documentation as enhancing the security and attractiveness of land across a variety of contexts. These findings have implications for policy debates on land titling and draw attention to the potential for other forms of written documents, such as customary land certificates, to make people feel more confident in their ability to invest in and maintain access to their land. They are consistent with the arguments made by

others saying that governments should embrace innovative ways of recording land rights because they incorporate “a semblance of formality” while allowing citizens to retain unique systems of ownership within customary tenure regimes (J. Banda 2011, 334). Our findings suggest that a key step forward in understanding land conflict and tenure security is to consider not only the authorities governing land rights, but also the opportunities citizens have to make these rights visible in different forums.

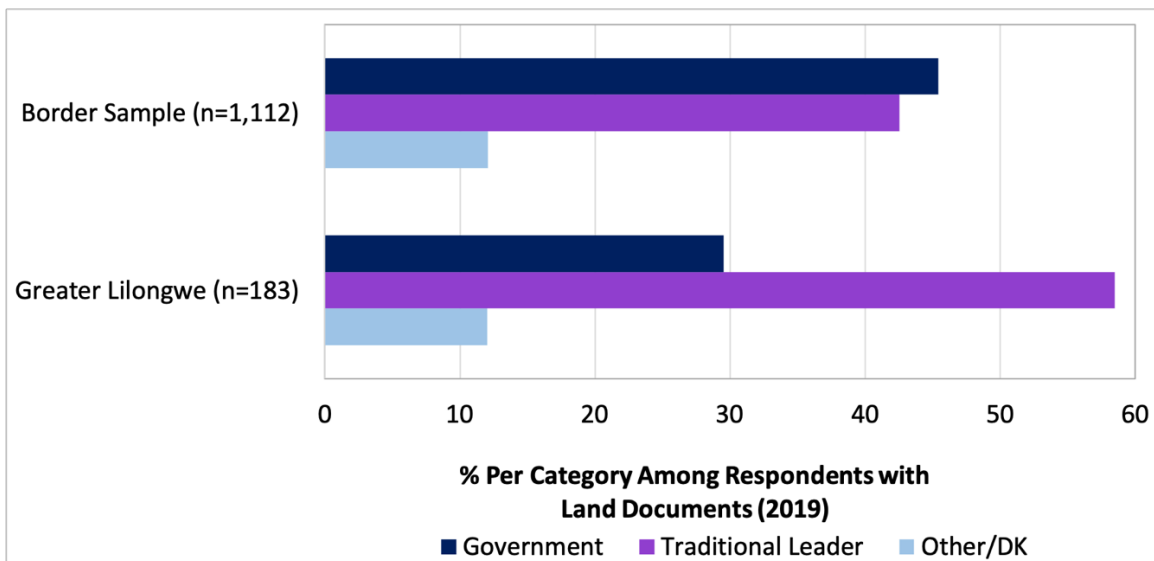
## More on the Research Findings

### 1) Many Malawians rely on written property rights from chiefs.

Written property rights that are outside of the state’s direct authority are common in Malawi. In the 2019 LGPI survey, 9% of the landowners in the sample of 6,754 reported possessing land documents allocated by a chief, in comparison to 8% of landowners with state land titles.

Customary property rights are often understood to be “not based on documentary evidence guaranteed by government statute” (Malawi Ministry of Lands and Housing 2001). Nevertheless, in many cases, Malawian citizens have acquired *written* customary rights, which may be as simple as an “informal registration” in a headman’s notebook describing relevant information about the land and its owner (Chome and McCall 2005). Informal registration is quite common in Malawi: in a survey of 360 households in six districts in 2016, among the 65 households who reported having “registered” land rights, 69% had registered them with the village head, 17% with the government, and 14% with both types of authorities (Dulani, Lust, and Swila 2016). Researchers have also described written customary rights in Malawi in the form of letters or notes that acknowledge the transfer of land rights, which are signed by customary authorities (Holden, Kaarhus and Lunduka 2006; Takane 2008; Chinigò 2015). More recently, the Customary Land Act of 2016 allowed for certificates of customary land in designated Traditional Land Management Areas.

Our survey results indicate that documents from chiefs are present within communities in both the greater Lilongwe area and the rural regions bordering Zambia. The figures below reflect whether a respondent reported that their household possessed a document indicating land ownership, among households who owned land in the sampled communities. Respondents with land papers were then asked who issued them. The “Government” category includes government, state agent, and local council. The “Traditional Leader” category includes chiefs, TAs, and village heads. The “Other” category includes “don’t know,” landlord, and other community members. Land documents issue by a traditional leader were present in both samples, but more common in the greater Lilongwe area. (See page 6 for the results by district).



## **2) The typical respondent with a traditional land document purchased their land and is from the majority ethnic group in their community.**

Furthermore, the typical respondent with a traditional land document identifies as low-income; has a primary school education; is considered to be a local; is not a recent migrant; lives in a married household; and is not related to a local traditional leader.

These attributes of respondents with traditional land documents differ from respondents with state titles in two key ways. First, while 57% of respondents with traditional documents reported purchasing their land, the typical respondent with a state title inherited their land, as did a typical respondent that did not have land papers. Second, the size of landholdings differs among the typical respondent with a traditional document (1.34 ha), state title (8.16 ha), and no papers (1.18 ha). This indicates that respondents with state titles in the sample had notably higher wealth in (documented) landholdings than respondents with no documents or traditional documents, even though the majority of respondents with state titles in the sample (78%) reported being low-income, in that their household income does not cover its needs.

The 2019 survey also reveals that it is not only elites, ethnic insiders, or wealthy residents who have acquired written representations of customary land rights. Among respondents with written rights from a chief, 6% reported being related to a traditional leader, compared to 13% without any land papers and 10% with state titles who were related to a TL. The breakdown of respondents from the ethnic majority group in the sampled locality were roughly similar across the three categories; respondents of the ethnic majority made up 62% of the respondents with written rights from a chief, 71% of respondents with no written land rights, and 60% of respondents with state titles. (See the Appendix for more descriptive statistics).

Finally, a multivariate regression analysis allows us to identify attributes that increased the likelihood that a respondent had a traditional land document, while controlling for other variables. Relative to landowners with no papers, respondents who: lived in proximity to townships; purchased their land; had higher incomes; and possessed larger land area were significantly more likely to have traditional land documents. The finding that proximity to a township increases the likelihood that respondents possessed a traditional document is particularly relevant to classic property rights theories (e.g., Boserup 1965), which anticipate that high population densities drive institutional innovations, such as novel land documents.

## **3) Land disputes were the most common type of disputes within the sampled communities.**

In the nationally-representative 2016 LGPI survey, the most common source of disputes within the community was land, with 31% of respondents reporting that this was the most frequent type of dispute in their community. Further, among those who had been part of a dispute themselves in the 12 months prior to the survey, 13% of those disputes were over land. The issue of how to secure land tenure is therefore highly salient.

Conflict within families and communities over land was also common, reflecting disputes that arise in the context of inherited and familial land. Respondents in the 2019 LGPI survey were most concerned about land tenure threats from family members (46%), followed by chiefs (21%).

## **4) The majority of respondents relied on traditional leaders for land dispute resolution.**

Among respondents in the 2016 LGPI survey, 62% reported that they had opted to engage with the village head to resolve their land disputes. Similarly, in the 2019 survey, 64% of those who sought help during a land dispute reported turning to a traditional leader.

## **5) Land titles are considered similarly valuable and secure regardless of whether provided by a traditional leader or the government.**

To help identify how citizens evaluate the desirability and security of a traditional land document relative to a state title, the 2020 survey included a survey experiment. Respondents were prompted with a hypothetical land buyer who was considering purchasing a hectare of land. The attributes of the land buyer, such as gender, varied in the experiment, as did characteristics of the area where the land was found, such as whether it was a place where most people help each other in times of need. Most importantly, the experiment varied whether the land would have a written document provided either by the government or by a chief. Respondents then made a recommendation of whether the buyer should purchase the land and evaluated the likelihood that someone might try or succeed in taking the land away from the buyer. By randomly varying these attributes, we were able to identify how those attributes impacted respondents' evaluations of the desirability of different types of land rights.

We find that respondents viewed land as more secure and valuable with documents from both chiefs and state authorities. When it was specified that written documents would accompany a land purchase, the likelihood that respondents thought others would try to take the land dropped from 15% to 10%, a substantively large 33% reduction in their expectations of land tenure threats.

Land documentation also decreased perceptions of a successful land expropriation by 4 percentage points, from a likelihood of 13% without documents to 9% with documents, and increased the likelihood of a respondent recommending purchase by 3 percentage points.

Respondents did not view attempts to take land as more likely when the buyer's land rights came from chiefs versus the government; however, they did predict a 3 percentage point increase in the likelihood of a successful land grab if attempted on land granted by the chief rather than on land granted by the government. The authority granting the land had no impact on whether respondents recommended the land purchase.

Examining the results on documentation of land ownership and authority provides limited support for the argument that property rights recognized by state authorities are more secure than customary rights. Instead, the findings show that having written rights is most important. Respondents were no more or less likely to recommend a land purchase when chiefs had provided written documents than when the state did. Their evaluations of the buyer's tenure security when asked about the state's and the chiefs' land documents were also similar. What mattered in this experiment was having written documentation of land ownership, be it from a chief or from the government.

#### **6) Respondents with a higher level of education placed a higher value on land documentation.**

Respondents with both high and low education believed that land documents would increase tenure security. However, the significant interaction between respondents' education levels and written documentation indicates that the effect of the treatment was stronger for those with a higher education level. Among respondents with at least some secondary education, written documents decreased their predictions of land tenure threats from 20% to 10%, a reduction of 50% or 10 percentage points. In comparison, among respondents with a primary school education, the change was only 3 percentage points between written and unwritten land rights. Similar results hold for perceptions of the success of the land appropriation attempt. Recommending land was the only outcome where there was no substantial difference in response dependent on education level.

#### **7) Respondents perceived that written land rights were most beneficial for women and for those living in communities with low social capital.**

Respondents did not perceive women's land claims to be overall less secure, but the significant interaction between gender and written rights in the experimental results reveals that the Malawians in the sample perceived documents as a particularly valuable bulwark against land expropriations for women land users.

When respondents learned that the hypothetical land buyer was a woman, the effect of having documents on their perceptions of a successful land grab was 4 percentage points higher than the size of the documents effect was for men purchasers.

The effect of written rights was also stronger when respondents were prompted to think of communities where most people do not help each other versus communities where they do. In communities where neighbors do not help each other, the effect of written documents on perceptions of attempted and successful expropriation is 5 and 4 percentage points larger than in communities where neighbors do help each other. The results are similar for recommending purchase. Therefore, documents seem to matter most as a resource for citizens in communities that have low social capital. In communities where respondents anticipated that the buyers might face greater challenges to their tenure security, the signal of a written document had a larger impact.

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## Appendix

