

APPLYING HUMAN RIGHTS 4 LAND TOOLS: RESULTS OF A PILOT IN MALAWI

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Acknowledgments

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Summary

High pressure on land in Malawi leads to high competition to access natural resources and disputes over access to and ownership of land and compensation for relocation. Tenure rights of people who lack formal documentation and whose opportunities to defend their rights are limited, are easily disregarded, exposing them to high risk of losing access to their land.

For millions of people in Malawi, whose livelihood depends on land, losing access to land means their right to food, housing and income can no longer be realized. By ratifying global and regional human rights instruments, the government of Malawi has the obligation to respect, protect and fulfil these and other rights that are linked to land governance. This obligation is the backbone of a human rights-based approach (HRBA) to land governance. By building on binding human rights, the government of Malawi can be held accountable for responsible land governance. For land defenders this can be a powerful lever to secure tenure rights of vulnerable and marginalized people.

TMG Research, the Danish Institute for Human Rights (DIHR) and the Malawi Human Rights Commission (MHRC) have developed two tools under the HRBA to land governance; the **Human Rights 4 Land Navigator** and the **Human Rights 4 Land Monitoring Tool**. These tools are based on the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forest (VGGT) and their underpinning human rights. They can help land and human rights actors to connect land governance with human rights obligations of States. The tools have been piloted by the Malawi Human Rights Commission and the CSO Land Governance Alliance in Malawi, in 2022.

This paper presents the results of this pilot in Malawi. It shows how the tools revealed human rights violations at the heart of (irresponsible) land governance practices, such as the right to food, right to information and meaningful participation and the right to access to justice. This provided land and human rights actors with a powerful narrative and the legal back-up for evidence-based advocacy and policy improvements. The Human Right 4 Land Monitoring Tool allowed the MHRC and Land Governance Alliance (LAGA) to identify human rights violations in land governance law and practice, that were integrated in national and international reporting on land related human rights. The explicit link to human rights obligations provided a new opportunity to hold governments accountable for responsible land governance and to push for the effective implementation of the VGGT.

The Malawi Human Rights Commission showed they can be a valuable ally of CSOs and other land actors promoting land rights. Their legal expertise and access to the international human rights system complemented the vast knowledge of CSOs about land governance challenges at local level. Land governance monitoring and reporting fits their mandate and the high number of complaints about land disputes that are lodged at the commission, confirmed the relevance of land as a major human rights issue.

Introduction

Land governance challenges in Malawi

Rapid population growth is one of the main factors that increases pressure on land in Malawi. It leads to disputes over access and use of land, boundaries, and ownership. Encroachment on public land or idle land belonging to international companies, commercialisation of customary land, illegal land sales, eviction from informal urban settlements, eviction in the context of infrastructure development and relocation in areas prone to natural disasters, are common challenges faced by people in vulnerable situations in Malawi. For women securing access to land after divorce or decease of their husbands remains challenging, particularly in districts characterized by patrilineality.¹

The revised legal land framework, including a new set of land laws enacted in 2016 and amended in 2022, is only partially in line with VGGT² and is not yet rolled-out at large scale. Its weak implementation means that land rights of vulnerable people are not (yet) protected sufficiently. Especially land users without formalized tenure rights are disproportionately at risk of losing access to their land. For those whose livelihood fully depends on access to land (especially smallholder farmers), losing access to land means losing access to food, income and housing. This shows that losing land contributes to increased poverty and puts the realisation of economic, social and cultural human rights of vulnerable people are at risk.

The interconnection between land and human rights

Human rights and land rights are interconnected in multiple ways: access to land is not only a prerequisite for the realisation of substantive rights, such as the right to food, housing and income. The obligation to realize procedural human rights such as the right to participation, non-discrimination, and access to justice, are safeguards for land users to protect their tenure rights and secure access to land. By ratifying the universal human rights instruments in which these rights are enshrined, the Government of Malawi is obliged to protect, respect and fulfil these human rights.

Human rights-based approach

The obligation of the Government of Malawi to realize binding human rights, is the backbone of a **human rights-based approach (HRBA)** to land governance, that has been developed by TMG Research, the DIHR and the Malawi Human Rights Commission (MHRC). This approach has the potential to hold the Government of Malawi accountable for the implementation of responsible land governance and to secure tenure rights of vulnerable people.

Two practical **Human Rights 4 Land Tools** have been developed under this approach; the **Human Rights 4 Land Navigator** and the **Human Rights 4 Land Monitoring Tool**. These tools allow National Human Rights Institutions (NHRIs), Civil Society Organisations (CSOs), research institutions and governments, to explicitly link land rights and human rights. The tools have been piloted by the Malawi Human Rights Commission and the CSO Land Governance Alliance (LAGA) in Malawi in 2022. This paper presents the tools and the results of the pilot and reflects on the potential of a human rights-based approach (HRBA) to hold the government of Malawi accountable for responsible land governance.

¹ Land governance status report for Malawi (2020) by Justin Dzonzi

² See also **Malawi Light Country Assessment** (2022) by Marc Wegerif

Voluntary Guidelines on Responsible Land Governance

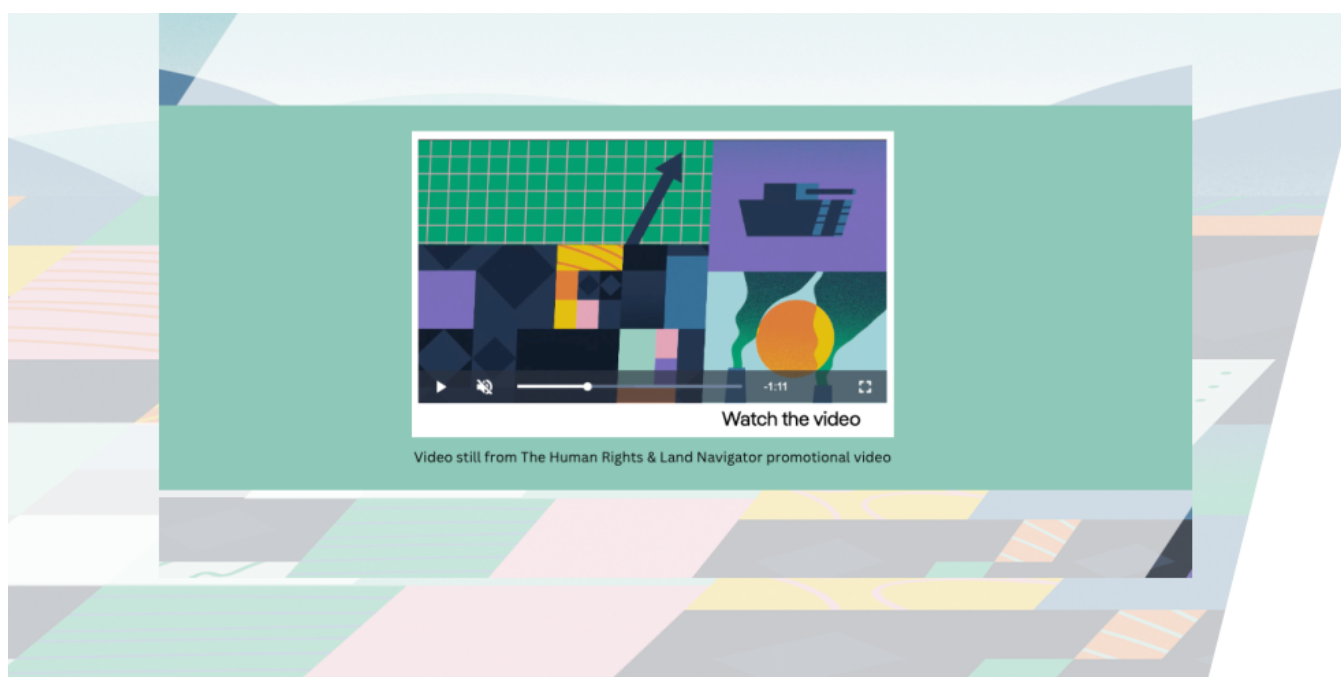
At the centre of the **Human Rights 4 Land Tools** are the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT). These guidelines, endorsed by the UN Committee on World Food Security (CFS) in 2012, provide universally agreed principles for responsible land governance, that protect legitimate tenure rights of vulnerable people, including informal and customary rights to access land. Due to its voluntary nature, holding the Government of Malawi accountable for the implementation of these guidelines can be challenging.

However, binding international human rights standards are underpinning these guidelines (see VGGT paragraph 2.2.). The **Human Rights 4 Land Tools** build on these human rights obligations that are an important lever to hold governments accountable for the implementation of the voluntary guidelines and the effective protection of tenure rights of people in vulnerable situations.

The Human Rights 4 Land Navigator

The **Human Rights 4 Land Navigator** shows how tenure rights and binding human rights are connected exactly: for the first time, the human rights obligations at the heart of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Forests and Fisheries (VGGT) and the human rights instruments and articles in which these are enshrined, have been systematically mapped and visualized in this online tool.

The tool allowed different land and human rights actors in Malawi to understand how both are connected, and which human rights instruments can be used to strengthen their advocacy for land rights. The Malawi Human Rights Commission used the Navigator to systematically assess human rights at risk in land dispute investigations, to critically review and provide feedback to the amended land laws in 2022 and for two case studies on land disputes.



The Human Rights 4 Land Monitoring Tool

An indicator-based tool

The interconnection between human rights and land governance, as captured by the **Human Rights 4 Land Navigator**, is the basis of the **Human Rights 4 Land Monitoring Tool**. The tool allows land and human rights actors to assess compliance of land governance in a particular country or location with the VGGT and its underpinning human rights obligations.

The tool consists of **human rights-based indicators**³ that allow to assess the legal land framework (structural indicators), measures taken to ensure the effective implementation of laws and policies (process indicators), and its impact on land users (outcome indicators). As much as possible, already existing indicators were selected from other monitoring tools⁴ to avoid overlap and ensure complementarity, allowing data collectors to tap partly from existing data sources. For missing elements, new indicators have been defined.

Two questionnaires have been developed to collect data on these indicators: a **national level questionnaire**, covering structural and process indicators, and a **local level questionnaire** to assess the outcome of land laws, policies and procedures in a particular land governance situation (case).

The purpose of the tool

The data collected with this monitoring tool, can be used for evidence-based advocacy for legitimate tenure rights of vulnerable people and to inform land policy improvements. The human rights violations linked to land governance challenges can be included in national and international human rights reporting, giving land defenders an extra lever to hold governments accountable for responsible land governance (implementing the VGGT).

Piloting the Monitoring Tool in Malawi

Introduction

The **Human Rights 4 Land Monitoring Tool** has been applied by the Malawi Human Rights Commission (MHRC) in 2022 to assess land governance gaps at the national level and in two different local contexts (Lilongwe and Salima District in the Central Region of Malawi). The CSO Land Governance Alliance (LAGA) applied the tool in three different locations in Phalombe District in the South of Malawi. The selected local contexts all faced different land governance challenges. The local level questionnaire has been responded to by 106 people in total; 73 interviews have been done with individuals. 33 people responded through focus group discussions.

The national level assessment

The national level questionnaire serves to assess compliance of the legal land framework and measures to ensure its effective implementation with the VGGT and human rights obligations of States. To fill in the questionnaire, the MHRC 1) could partly rely on existing data sources, 2) collected data through

³ Following the **methodology of OHCHR** for identifying human rights-based indicators

⁴ Including among others LANDEX FAO LAT Prindex, World Bank LGAF Scorecard, Land Matrix for large scale land acquisitions and FAO Land and gender data

desk research, including for the analysis of laws and policies, and 3) arranged interviews with government representatives from different ministries to get missing information. Where qualitative questions are asked, the answers ultimately rely on the judgement /assessment of the MHRC.

A new Customary Land Act has been enacted by the Malawi Government in 2016, enabling smallholder farmer to convert their customary land rights to private land rights with registered titles. This law has been revised and gazetted in 2022. The roll-out of these laws is still in its infancy phase. The results of the national level assessment therefore show a high level of compliance of the legal framework with human rights obligations and the VGGT. Most gaps that were identified concern procedural indicators that assess efforts undertaken by the State to effectively implement these laws and policies.

The following gaps were identified:

- **Lack of access to legal aid**, in terms of availability, accessibility (geographical, language, information) and (financial) affordability (as per HR standards)
- **Lack of access to information** (as per Malawi constitution and HR instruments):
 - about land laws and policies (amended in 2022, implemented in 3 districts so far), land services, redress mechanisms, access to legal aid > in principle this info is available (online) but inaccessible for the vast majority as documents are provided in digital and written form only, in English only, and sometimes only accessible for a certain fee.
 - about large scale land deals, valuation and land taxation, land use plans, procedures of expropriation > this information is not made available (and therefore not accessible)
- **Lack of clear procedures for consultation and participation** in case of land use changes
- **Gender inequality**: discrepancy between the succession law, providing for equity between men and women, and the new amended Customary Land Act that also provides for checks and balances in customary land committees and tribunals on the one hand, and discrimination of women in practice, in both matrilineal and patrilineal customary systems on the other hand
- **Lack of availability, accessibility, affordability, and quality of land services** at decentral levels, leading to significant challenges in ensuring adequate demarcation, mapping and registration of land. For people settled informally (Lilongwe case) there's fear of being dislocated if aiming for registration of their land

The automatically generated **report** visualizes the results of the national level questionnaire, using a traffic light system to draw attention to the aspects of land governance that are not compliant with human rights obligations and the VGGT. A closer look and more profound analysis of the red indicators is needed to understand why the answers here are negative, and what should be done to improve governance in this area.

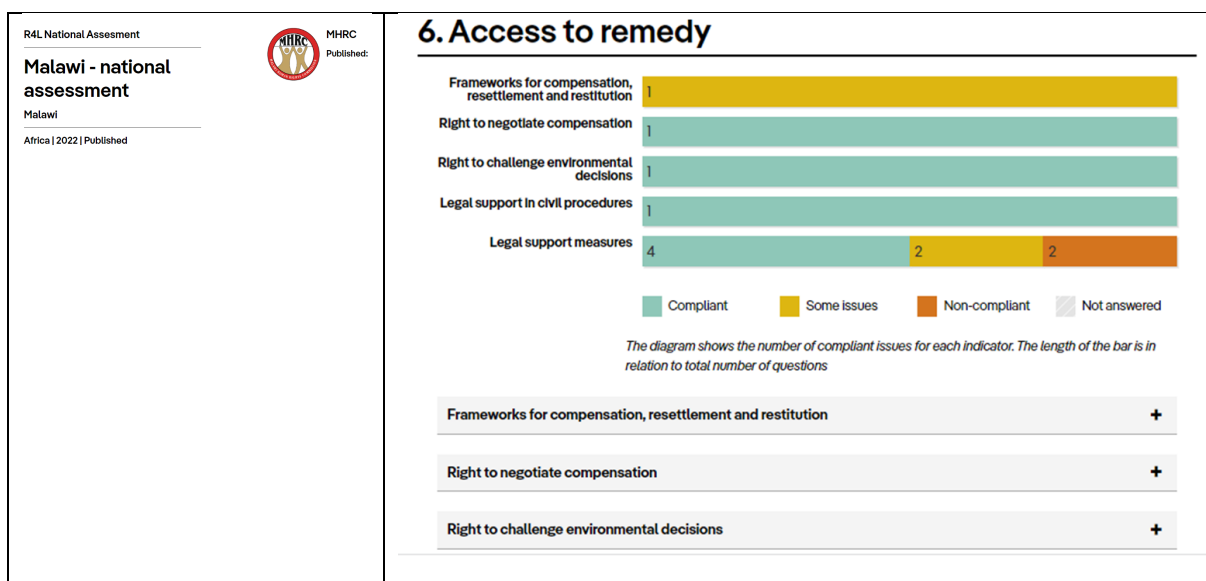


Figure 1 Extract of the report of the National Level Questionnaire: results Cluster 6

The local level assessments

The MHRC and LAGA also collected data on land governance practices and their impact on land users in five different locations. The areas were characterised by different land governance challenges:

- insecure tenure in an informal urban settlement (Traditional Authority (T/A) Maoni, Lilongwe)
- relocations due to natural disasters (T/A Chiwalo, Phalombe District)
- expropriation due to the construction of a hospital (T/A Kaduya, Pha-lombe District),
- compensation for eviction from land that was leased by a sugarcane (T/A Mwaza and T/A Khombedza, Salima District) or mining company (T/A Maoni, Phalombe District).

See key results per location in the annex.

The analysis of the aggregated local data shows the following gaps:

- **Registration:** the vast majority of respondents indicated not to have formally (52 of 69) or informally (54 of 60) recognized tenure documents.
- **Perceived tenure security:** The majority of respondents indicated it's very likely (42 of 106, or 40%) or somewhat likely (19 of 106, or 18%) that they will lose the right to their land, property or resources, or part of this land, against their will in the next 5 years. Many different reasons for the fear of losing land were mentioned. The fear that a company or the government will seize their land was the most common reason.

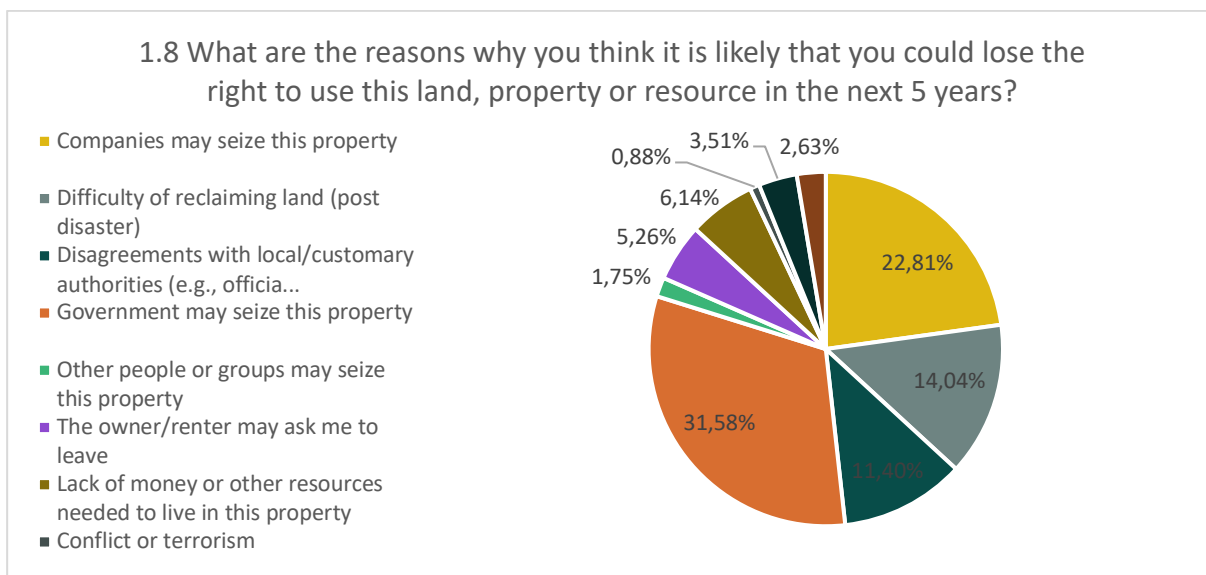


Figure 2: Result under cluster 1 Protection of legitimate tenure rights of the Local Level Questionnaire

- **Conflicts:** 20 out of 69 respondents has had experienced a land conflict in the past 3 years. The most common reasons for conflicts were evictions, valuation of land, compensation and ownership disputes due to the lack of land registration. Most of the conflicts were with the State.
- **Consultation and participation:** Regarding information, consultation and participation issues, respondents who have been confronted with expropriation or other measures in the last three years identified some problems. For example, there was usually only one round of information at the beginning of the expropriation process or other land reallocation measures, with no further meetings during and after the implementation of these measures (as stipulated in OHCHR's FPIC guidelines) (according to 12 of 18 respondents). In addition, young people were mostly not invited. Stakeholders' opinions were often not taken into account (confirmed by 75-85% of all respondents) in the final decisions, nor were explanations provided on the decision-making process. It can be concluded that in most cases a proper, inclusive consultation and meaningful participation process, with a real opportunity to influence decisions, as described in **OHCHR guidelines on participation in public affairs** did not take place
- **Access to remedy:** Hardly anyone (only 9 of 59 respondents) has sought legal remedy in case of land related disputes. Different challenges of seeking legal remedy were mentioned by the respondents:

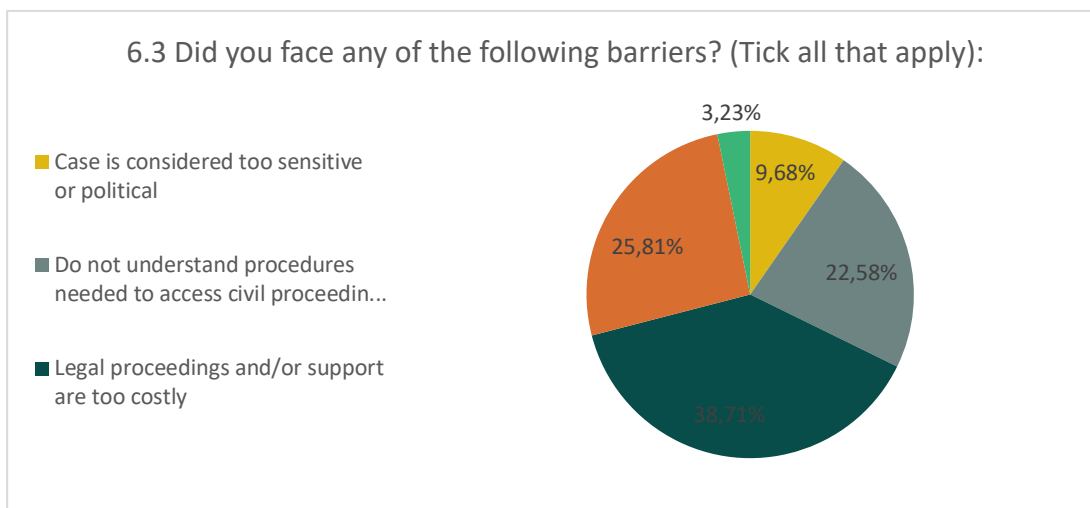


Figure 3 Result under cluster 6 Access to remedy of the Local Level Questionnaire

The majority (43 of 59, or 73%) also did not try to bring a land, property or natural resource related case to a community-based, informal or customary dispute resolution mechanism in the last 3 years.

Compensation: 6 out of 27 respondents (or 25%) answered they have not received compensation at all. These were all women. 21 respondents had received compensation to some extent. Overall, respondents indicated that the level of compensation was too low.

Land governance gaps leading to human rights violations

The results of the local and national questionnaires show that several human rights are being violated in the different locations:

The lack of tenure security, in many cases due to a lack of formal documentation of tenure rights and limited access to land services, leads to the violation of substantive human rights of people in vulnerable situations. The **right to an adequate standard of living** for example, including the right to food and housing (CESCR Art. 11) is being violated. The connections between land and an adequate standard of living and land are elaborated in CESCR's General Comment 26 on Land. By ratifying CESCR, the State of Malawi is obliged to realize this right of its citizens. The **right to food**, as part of an adequate standard of living, is also the most prominent human right that constitutes the foundation of the VGGT.

The **right to participation and consultation is often violated in the researched cases**. The VGGT (see among others 9.2, 9.9 and 12.3) encourage states to ensure active, free, effective, meaningful and informed participation of those who could be affected by land use decisions, prior, during and after decisions have been taken. In addition, government officials need to respond to contributions of citizens. These provisions are underpinned by obligations of states to realize the human right to participation (see ICCPR art 25, ICEDAW art 14.2.a, UNDROP art. 10 and UNDRIP art. 19.)

Land users can only participate effectively and hold governments accountable if land laws, procedures, land use plans, information about land deals and land services is available, accessible and affordable. Both questionnaires show this is not always the case. The **right to information** (see UDHR art 19, ICCPR art. 19.2) related land governance is not fully realized.

The last gap to be emphasized here, is the lack of access to justice and remedy. The VGGT (General Principle 3A.4) and the international human rights framework provide for the **right to an effective and prompt remedy** by competent impartial judicial, administrative, or legislative authorities, for acts violating the fundamental rights granted by the constitution or law (UDHR art. 8, ICCPR art. 2.3). Means of resolving disputes should be affordable, effective, and available in the language of the person concerned (UNDROP art. 12.2). Both the national and local level questionnaire show that the Government of Malawi is not fulfilling this human right for smallholder farmers in the context of land conflicts.

In summary, the results show that many of the land governance challenges, especially when it comes to expropriation, have a very strong connection to human rights violations. Highlighting the violation of human rights provided the MHRC and LAGA, and other land and human rights actors with whom the results were shared, with strong arguments for their advocacy for increased protection of tenure rights and for holding the government accountable for implementing the VGGT.

From Data To Action

The results of the monitoring efforts of the MHRC and LAGA were shared with a wide range of national land and human rights actors in Malawi. It provided the basis for a joint **evidence-based advocacy plan** for improved tenure security and responsible land governance. For the first time, the MHRC became part of a network of national land CSOs and started collaborating on improving access to justice with the National Land Coalition.

The results were also used to **raise awareness** about rights and duties of land users and government officials at district level and facilitate dialogue between conflicting parties in the different communities.

The MHRC reported on land-related human rights violations, including key challenges identified with the HR4L Monitoring Tool, in its **national position paper on the current social, political and economic situation in Malawi (November 2022)** and the **international Alternative report submitted to the Committee on Economic Social Cultural Rights (January 3, 2023)**, after consultation with CSOs working on land rights.⁵ In this report, the MHRC encourages the Committee to call on the government of Malawi to:

- Fully adopt a human rights-based monitoring approach in its land administration and management based on relevant international human rights instruments and VGGT.
- Effective land governance:
 - fully operationalize the Land Amendment Act of 2016, the Customary Land Act of 2016 and the Access to Information Act 2017
 - adequately fund the Ministry of Lands in order to effectively carryout awareness raising activities of land related laws across the country

⁵ Consultated organisations: Catholic Development Commission (CADECOM), Centre for Environmental Policy and Advocacy (CEPA), Civil Society Agricultural Network (CISANET), Habitat for Humanity Malawi, Land Governance Alliance (LAGA), Legal Aid Bureau, Malawi Congress of Trade Union (MCTU), Ministry of Lands, Mwapata Institute, Natural Resources Justice Network (NRJN), National Land Coalition (NLC), NGO Gender Coordinating Network (NGCN), OXFAM Malawi, Total Land Care (TLC), Women Legal Resource Centre (WOLREC)

- ensure that Ministry of Lands completely devolves into district councils for effectiveness. (following the subsidiarity principle)
 - make land services accessible to people living in the rural areas as provided in the Customary Land Act 2016.
- Improve access to justice:
 - Expedite the process of establishing the land committees/tribunals to manage land administration and disputes at grass root level in the spirit of the Customary Land Act (2016). This will ensure expedient conflict settlement and in where possible allow for mediation before arbitration.
- Strengthen right to participation and consultation:
 - Ensure that the process of development of land related regulations to support and guide implementation of the new Land Laws are consultative, inclusive, and comprehensive, complying with human rights obligations and guided by the VGGT.
 - To ensure that *Environment Impact Assessments* are objectively done, human rights of the communities are taken into consideration, communities are adequately informed, consulted and allowed to participate, the results of the assessments are adhered. This also includes strengthening the capacity of the newly established Environmental Management Authority and making it independent in its operations and mandate in order to effectively discharge its duties and hold investors accountable in the process of implementing their investments.
- Improved access to information:
 - Fully implement the Access to Information Act of 2017 and other related legislations by making available to the public all relevant information relating to large scale land deals and investments (including contracts); valuation and land tax; land use plans; land mapping; and procedures for expropriation.
 - Government to raise awareness among the general public about the new *Access to Information Regulation*, gazetted in 2021 and to comply with this regulation themselves by publishing names of responsible information officers
- Respect of rule of law: Depoliticize land administration at all levels.

Concluding Reflections

The potential of the HRBA and its tools

The pilot in Malawi showed how the tools helped land and human rights actors to better understand which human rights are at stake in land governance, and to analyse land governance challenges in different contexts from a human rights perspective. The **tools helped to identify human rights violations** such as the right to an adequate standard of living (including the rights to food and housing), the right to information and meaningful participation and the right to remedy.

Connecting land and human rights explicitly, **provided a powerful narrative and the legal back-up that strengthened advocacy and policy improvements** for the increased protection of tenure rights of vulnerable and marginalized people. For **land users** in the researched locations, the awareness of their human rights, confirmed the legitimacy of their land claims, **empowering** them in their struggle for the recognition of these rights. For **duty bearers**, especially at district and village level, the awareness of their obligation to realize human rights through responsible land governance, triggered some **new commitment to support the land claims of their citizens**. However, budget constraints, lack of qualified staff in district land bureaus, delayed roll out of new land laws and lack of accessible dispute mechanisms, are challenges that are not solved overnight, by increased awareness of rights and duties.

The international monitoring and reporting mechanism of the Committee on Economic Social and Cultural Rights provided a new platform for land defenders in Malawi to report on land related human rights violations, and to hold the government of Malawi accountable for responsible land governance and the protection of tenure rights of vulnerable and marginalized people.

The work of the Malawi Human Rights Commission confirmed that National Human Rights Institutions can be a valuable ally of CSOs and other land rights defenders fighting to secured tenure rights. Their legal expertise and access to the international human rights system complemented the vast knowledge of CSOs (including LAGA and other members of the National Land Coalition) about land governance challenges at local level. Land governance monitoring and reporting, legal framework assessments, awareness raising, advocacy and case investigation, are all part of the official mandate of the MHRC, and they are a recognized independent institution, well respected by the Malawi government. The high number of complaints about land disputes that are lodged at the commission, confirm the relevance of the land governance topic in the context of human rights realization, and motivated the commission to engage in human rights-based land governance monitoring.

Overall, it can be concluded, that anchoring the struggle for secured tenure rights in the human rights system, including the human rights standards, its monitoring and reporting mechanisms (CESCR) and its actors (MHRC), provided a powerful new entry point to hold the government of Malawi accountable for responsible land governance and to push for the effective protection of tenure rights of people in vulnerable and marginalized situations.

Beyond identifying and reporting on land governance gaps in national and international fora, it is of key importance that the Malawi Human Rights Commission, Land Governance Alliance and other land defenders engage in the implementation of the advocacy plan and follow-up on recommendations about land governance made by CESCR. They can also address some of the identified gaps directly, especially when it comes to access to information, awareness raising about laws and rights, facilitating access to justice, and the roll-out of the new Customary Land Act.

Annex 1: Results local questionnaire per district

The report presented the key gaps identified by the local level questionnaire, based on the aggregated results. The results of the 5 locations where data was collected, are presented here.

Lilongwe district: Mgoni Area

Background

Mgoni area is a neighbourhood of Lilongwe where residents are squatters, most of them not having any legal papers for their land parcels, despite the fact they have been living there for many years already. As a result, they live in fear of being evicted from the area by either the government or a private company, especially since Mgoni was allocated as industrial area in the original zoning plan. 10 individual questionnaires (with 5 women, 5 men) have been conducted. Among the respondents, 4 were older than 35 years, and 4 are younger than 35 years old (the age of 2 respondents is not known).

Main gaps

The main governance challenges identified in Mgoni area are related to ensuring adequate **demarcation, mapping and registration** of land. Among the 10 respondents, 9 indicated they don't have any formal or informal documentation of their tenure rights. Lack of documentation of tenure rights affects the (perceived) **tenure security** of the people interviewed and increases the **potential for conflict**. 9 (5 male and 4 female) respondents out of 10 respondents answered that it's somewhat likely that they will lose the right to land in the next 5 years, against their will. One person is owning a house formally and is not afraid of losing his property.

The main reasons why they thought it's somewhat likely that they will lose the right to land are fear that companies or the government seize their property, that the owner may ask them to leave or lack of money needed to live in this property.

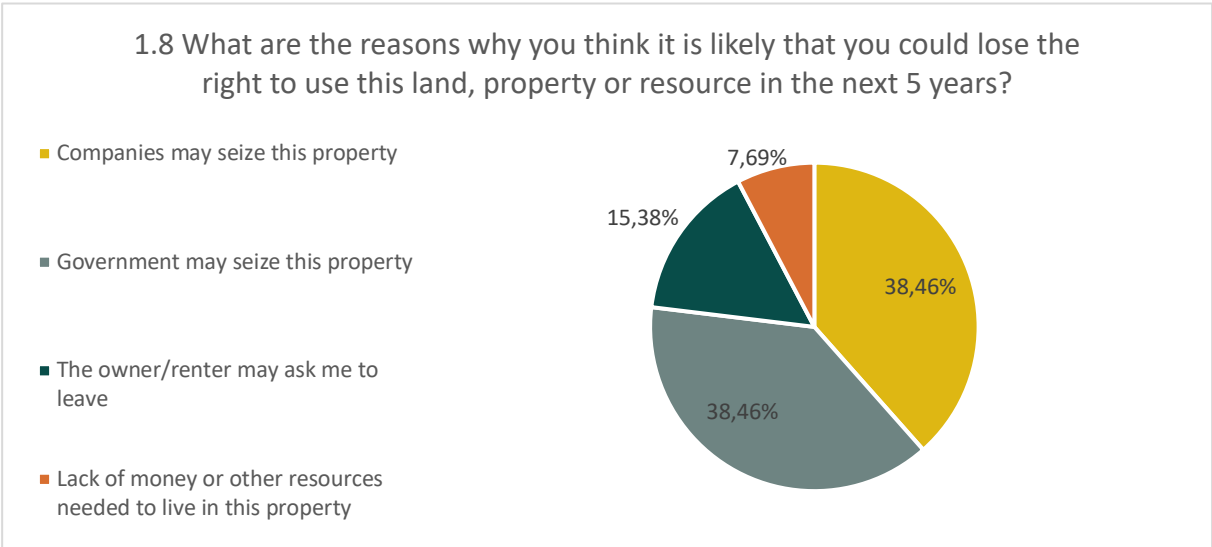


Figure 4: Result under cluster 1 Protection of legitimate tenure rights of the Local Level Questionnaire in Lilongwe District

The most **significant difference between the answers of men and women** to this question, is that women give ‘lack of money needed to live in this property’ as a **reason for losing the property** more often than men (19% women vs 8% men)

8 out of 9 respondents indicated that there has not been a process involving relevant public authorities to identify, demarcate, map or register their land in the last 3 years. 4 respondents indicate that information about how to register land officially is not available or accessible, 5 respondents also indicate that they can’t afford registering their land. **One of the most important reasons for not seeking to register land though, is fear of being evicted because of living in an informal settlement.** The *right to adequate housing* as part of the rights to adequate standard of living (CESCR Art 11) is at risk for at least 9 of 10 respondents, when they are evicted from this land.

Salima district: T/A Mwaza (Mphonde Village) and T/A Khombedza (Ngwata Village)

Background

The residents of these two villages in Salima district are former labourers of Press Agriculture Limited, who used to lease the land for crop cultivation. After closing their business, the former labourers continued living on and cultivating the land for their own livelihood. None of them has formally recognized or registered tenure rights. When the Government of Malawi bought the land from PAL and leased it to Salima Sugar Company, the residents were compensated for improvements (planted trees and houses) on this land. Currently the government is making arrangements to give people another land parcel for them to live and cultivate crops on. In total 35 people (19 women, 16 men) have been interviewed; 2 through individual interviews, 33 through focus group discussions. The focus groups consisted of the following groups:

- one group of 7 men older than 35 years old,
- one group of 9 men younger than 35 years old,
- one group of 2 women older than 35 years old,
- one group of 8 women younger than 35 years old and 7 women older than 35 years old

Main gaps

None of the respondents has formal or informal documents recognizing their tenure rights. All 35 respondents indicate it’s very likely they will lose the right to the land on which they are currently living, as they fear that the government or the Sugar Cane Company will take their land.

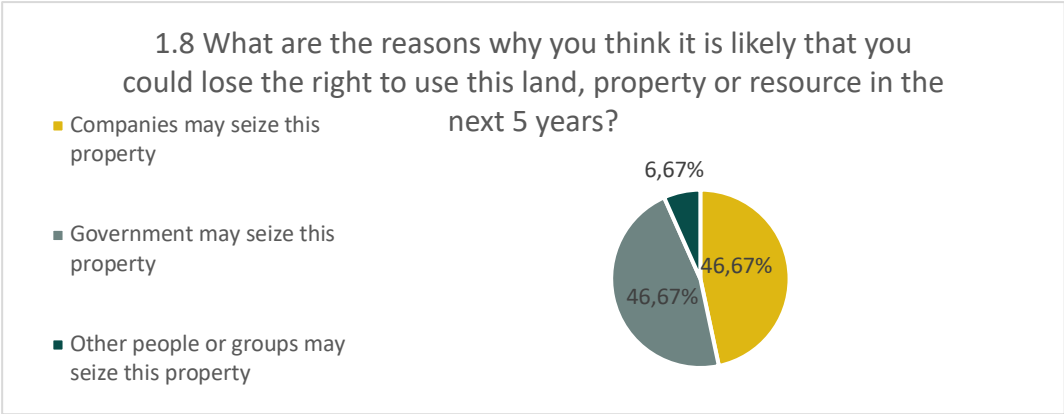


Figure 5: Result under cluster 1 Protection of legitimate tenure rights of the Local Level Questionnaire in Salima district

The **conflicts** experienced in the past three years were mostly about ownership due to lack of registration and land grabbing by the government, evictions, and low level of compensation.

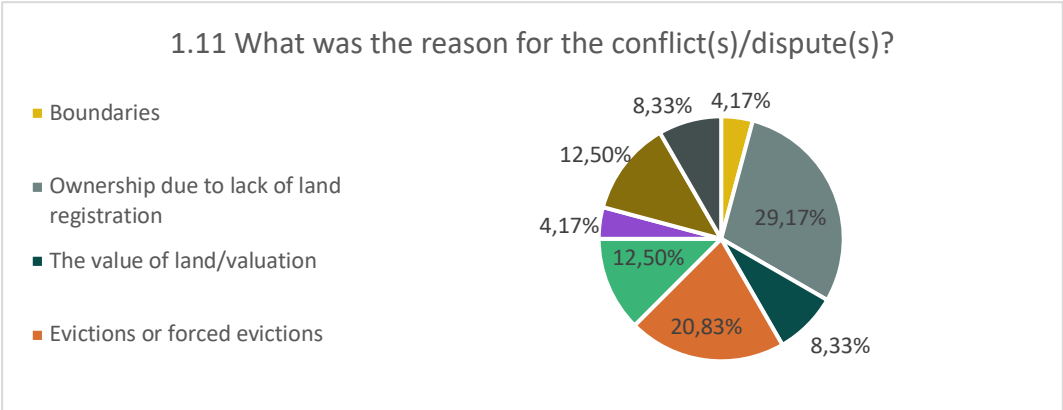


Figure 6: Result under cluster 1 Protection of legitimate tenure rights of the Local Level Questionnaire in Salima district

Right to participation

The collected data show a gap in terms of the right to information and consultation. Although the answers to the question who participated in the consultation process vary, the villagers argued that most of the time only chiefs were informed and consulted. Information about the procedures for the expropriation process was not (67%) or only partly available (33%). These constraints resulted in lack of direct involvement and influence of villagers, limited access to information and increased risk of bribery between the Sugar Cane Company and the local chiefs.

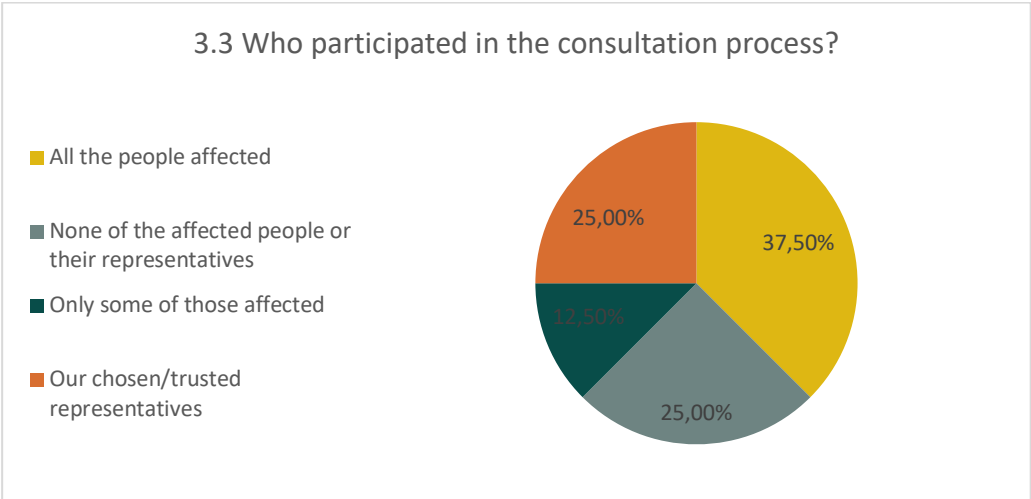
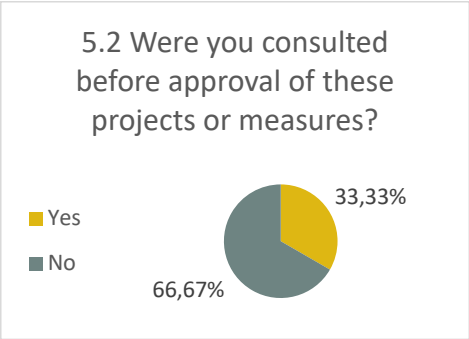


Figure 7: Result under cluster 3 Protection against dispossession, land grabbing of the Local Level Questionnaire in Salima district

Collected data show a **significant difference between men and women** to the question whether they have been consulted before being affected from their land:

Answer by women



Answer by men

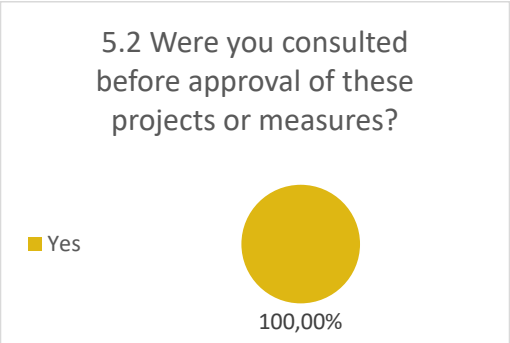


Figure 8: Results under cluster 5 Access to information, consultation, participation of the Local Level Questionnaire in Salima district

Right to remedy and an adequate standard of living?

Another important gap is related to appropriate **compensation and relocation**. Villagers argue that compensation was too low, the basis for its calculation was not clear and outdated, and it’s not paid in a timely manner. Villagers are supposed to be relocated but are still waiting for this to happen, while not being allowed to continue farming on the land, posing a threat to their food and housing security. In general, the villagers would have preferred compensation in money, instead of being relocated.

Right to remedy

The last significant gap is lack of **access to justice and remedy**. 50% of respondents tried to seek legal remedy to solve the fight the low levels of compensation and relocation to new parcels. None of them got legal support, mainly because of not understanding the procedures or because legal support is not affordable.

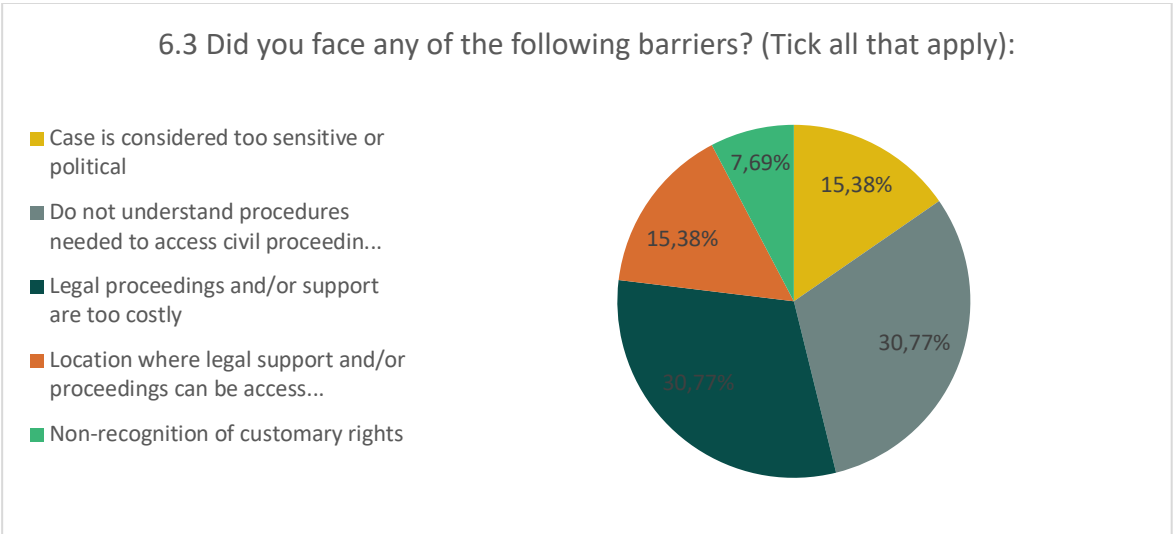


Figure 9: Result under cluster 6 Access to justice and reparations, right to remedy of the Local Level Questionnaire in Salima district

60% also indicated to have brought their complaint to a customary dispute resolution mechanism but indicated that the traditional authority is not a neutral actor in this conflict. 75% of the respondents answered, they failed to settle the conflict in a satisfactory manner, whether through customary or statutory dispute resolution mechanisms.

Phalombe district: T/A Kaduya, Sub T/A Maoni and T/A Chiwalo

Background

All three T/As are characterized by different land governance challenges. Sub-T/A Maoni was selected because it has a mining investment whose concession was given in 1991 and compensation to original customary land owners is now taking place. Maoni was also among the 3 areas where the new Customary land Act (2016) has been piloted in recent years. In T/A Kaduya community surrendered customary land to allow a government hospital construction project, through consultations, while fair compensations were given. In T/A Chiwalo floods and landslides affect agricultural land, housing, and livestock, leaving its residents injured, and without livelihood. Relocation and resettlement are challenging as the pressure on land is high. A total number of 57 people were interviewed individually.

In total 57 people were interviewed individually:

- T/A Chiwalo (village Nambazo and Chiwalo): 21 (15 women, 6 men)
- T/A Maoni: 22 (18 women, 4 men)
- T/A Kaduya: 19 (15 women, 4 men)

Main gaps

One of the main gaps from the local assessments in T/A Kaduya, T/A Maoni and T/A Chiwalo in Phalombe district is related to the **lack of formal recognition of tenure**. Only 25% of all respondents have formal documentation. The **difference between men and women is significant** here; 34% of women have legal documentation, versus 20% of all male respondents. The fact that a matrilineal family system is dominant in Phalombe District, is likely to explain this difference. In matrilineal communities in Malawi, women are the owners of land. 35% of the respondents have informal documentation of their tenure rights (showing no significant difference between men and women).

Important to highlight are the **different results in Maoni**. In the context of piloting the new Customary Land Act of 2016, that encourages formal registration of customary tenure rights, **67%** answered to have formal/legally recognized documents recognizing their right to land.

Many people are **not aware of where and how to get their land registered**. 34% of the respondents know which authority to go to (compared to 57% in Maoni), but only 4 out of 12 indicated it is easy to get information about the application process, fees and processing time. 72% of all respondents indicate they didn't manage to get land services within reasonable timeframe. For those who did register their land, in 48% of the cases, the process took more than 2 years. Even in Maoni, 43% of the respondents said it took more than 2 years to get their land registered.

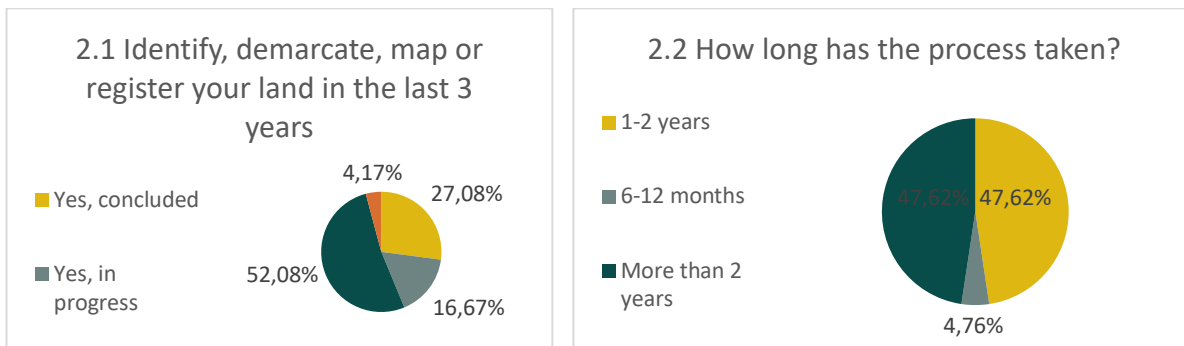


Figure 10 Results under cluster 2 Responsible governance of tenure of the Local Level Questionnaire in Phalombe district

Right to an adequate standard of living, especially right to food, at risk

The perception of high **risk of losing tenure** was attributed to fear that the government that might seize the property, disagreements with local authorities and difficulties in reclaiming land after temporary dislocation during natural disasters. The latter was particularly the case in **Chiwalo**, an area prone to floodings. **71%** of all respondents indicated they risk losing tenure due to difficulties in reclaiming their land. As a consequence of floods and relocation, they lost access to their land. Although victims of the flood received non-food items, they didn't receive food support, and found it challenging to meet their families' food needs without land.

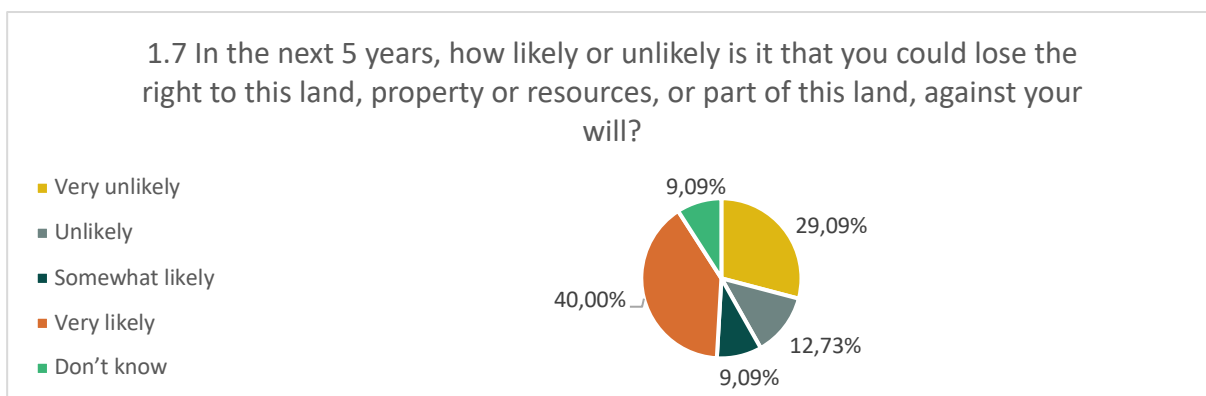


Figure 11: Result under cluster 1 *Protection of legitimate tenure rights* of the Local Level Questionnaire in Phalombe district

1.8 What are the reasons why you think it is likely that you could lose the right to use this land, property or resource in the next 5 years?

- Companies may seize this property
- Difficulty of reclaiming land (post disaster)
- Disagreements with local/customary authorities (e.g., officia...
- Government may seize this property
- Other people or groups may seize this property
- The owner/renter may ask me to leave
- Lack of money or other resources needed to live in this property
- Conflict or terrorism

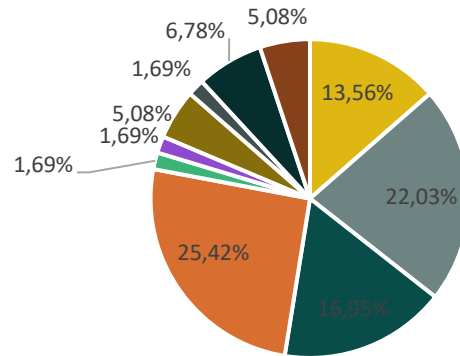


Figure 12: Result under cluster 1 *Protection of legitimate tenure rights* of the Local Level Questionnaire in Phalombe district

The right to participate

Another major gap identified in terms of responsible land governance is the lack of **participation and information** in land use change processes and decision making. Both in the context of the construction of a hospital as well as the investments of a mining company, tenure rights-holders information was not shared regularly, timely and in a transparent way (including positive and negative impacts) and there was no real opportunity to influence plans and decisions. However, respondents in Maoni were satisfied with the mining companies' Corporate Social Responsibility activities, including the setup of school nurseries, primary school feeding programs, drilling of boreholes and rural road upgrades.

Right to remedy

For the 22 respondents that had been displaced or relocated, 11 out of 17 women indicated they got compensation 'to some extent' and **6 women indicated they didn't get compensation at all**. The 4 men affected by displacement or relocation all answered they were compensated 'to some extent'. Most people claimed that the level of compensation was too low (as most of it is based on old laws that only compensate for structures built on land, but not for the value of the land itself)



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