



GOVERNMENT OF MALAWI

MINISTRY OF AGRICULTURE, IRRIGATION AND WATER
DEVELOPMENT

SHIRE VALLEY IRRIGATION PROJECT

COMMUNICATION, COMMUNITY PARTICIPATION,
LAND TENURE AND RESETTLEMENT POLICY
FRAMEWORK

LAND TENURE DIAGNOSTIC, ALLOCATION AND CONSOLIDATION STRATEGY

January 2017

CONTENTS

DEFINITIONS	7
ABBREVIATIONS AND ACRONYMS	10
Executive Summary	12
1 Introduction	16
2 Land Tenure, Policy and Law	17
2.1 Policy and Legal Framework	17
2.2 Land Governance	27
2.3 Land Issues and Challenges	29
2.4 International and Regional Frameworks	30
3 Land Use and Tenure Inventory	34
3.1 Introduction	34
3.2 Land Inventory Approach	35
3.3 Land Tenure and Land Use Mapping Team	40
3.4 Defining Village Boundaries	41
3.5 Defining Land Use Areas within the Village Areas	49
3.6 Land Use Results	50
3.7 Land Tenure	57
3.8 Land Issues and Disputes	65
3.9 Land Markets	65
3.10 Landholder Demographics	66
3.11 Land registration in the Canal Route in Phase 1	66
3.12 Summary	69

4	Land Allocation and Consolidation Strategy	70
4.1	Introduction	70
4.2	Agricultural Policies and Strategies	70
4.4	Experiences with Land Consolidation in Malawi	76
4.5	Principles for Land Consolidation	85
4.6	Implementing the Land Allocation and Consolidation Strategy	89
4.7	Critical Issues in the Land Allocation and Consolidation Process	99
4.8	Management of the Land Allocation and Consolidation Strategy	101
4.9	Piloting the New Land Acts	102
	APPENDIX A: Land Tenure and Land Use Maps	104
	APPENDIX B:	112
	Detailed Land registration in Main Canal Line in phase 1	112
	Canal alignment for phase 1	112
	Methodology for the Detailed Land Tenure	112
	APPENDIX C:	115
	Grievance Redress Mechanism	115
	TABLES	
	Table 1 List of features registered in the field	40
	Table 2 Group Villages affected by Phase 1	43
	Table 3: SVIP general land uses, total area registered in hectares in Phase I	50
	Table 4 Areas per zone in Phase 1 with existing irrigation schemes	54
	Table 5 Land use in the Phase 1 in hectares	56
	Table 6 Private leasehold percentage in SVIP	59
	Table 7 Private leases identified in Phase 1	61
	Table 8 Private Leaseholds affected by Phase 2	63
	Table 9 Land use in the Main Canal Area	67
	Table 10 Crop Type and Land Tenure in Main Canal	68
	Table 11: Land Use and Tenure Summary	69
	Table 12: MGDS Agriculture and food security	71

FIGURES

Figure 1 Figure 1: Overview of the approach to prepare the Land Tenure Diagnostic, Allocation and Consolidation Strategy (LTDACS), Resettlement Policy Framework (RPF) and Grievance Redress Mechanism (GRM)	16
Figure 2: Land lease acquisition process (Ministry of Lands, Housing and Urban Development)	28
Figure 3 Map from October 2016 of the adjusted SVIP Phase I-II areas	36
Figure 4 Map of affected Group Villages in Phase 1	46
Figure 5 Registration of total Land Use in SVIP areas	53
Figure 6 Land Use Map. Phase 1	55
Figure 7 Private Leaseholds	58
Figure 8 Some of the Private leasehold locations in Phase 1	62
Figure 9: Private Leaseholds in Phase 2 (Zone B)	63
Figure 10 Mwalija Scheme	84
Figure 11 Vimvi irrigation scheme	85
Figure 12 Coverage Outgrowers schemes, phase 1	87
Figure 13 Process to implement Land Allocation and Consolidation Strategy	89
Figure 14 Potential Irrigation Schemes in Phase 1	93
Figure 15 Irrigation Zones in SVIP	96
Figure 16 Irrigation block in Zone I-1-d	97
Figure 17 Canal alignment with orthophotos on the tablet	113

DEFINITIONS

Consultant	Consultant for CCPLTRPF COWI A/S with sub-consultant CDM (Centre for Development Management)
Customary estate	Any customary land which is owned, held or occupied as private land within a traditional land management area and which is registered as private land under the Registered Land Act
Displaced Persons	The people or entities directly affected by a project through the loss of land and the resulting loss of residences, other structures, businesses, or other assets ¹ .
Eligibility	The criteria for qualification to receive benefits under a resettlement programme ¹ .
Household	The term household refers to a group of people who reside together and share in the functions of production and consumption. It is also the smallest unit of consumption, and sometimes production. ²
Household Head	But for purposes of the census, the household head was considered to be that person among the household members who is acknowledged by other members of the household as the head and who is often the one who makes most decisions concerning the welfare of the members of the household. Hence the people presented in this chapter as household heads are those males or females who were reported as heads by members of their specific dwelling units. ³
Involuntary resettlement	Direct economic and social impacts that both result from investment projects, and are caused by: (a) The involuntary taking of land resulting in (I) relocation or loss of shelter; (II) loss of assets or access to assets; or (III) loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or

¹ Involuntary Resettlement Sourcebook, Planning and Implementing in Development Projects. 2004 World Bank

² Census for Housing and Population 2008. Gender Report. Section 6.1. NSO

³ Census for Housing and Population 2008. Gender Report. Section 6.2. NSO

	(b) The involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons ¹ .
Land Acquisition	The process of acquiring land under the legally mandated procedures of eminent domain ¹ .
Orthophoto	An aerial photo geometrically corrected "orthorectified" such that the scale is uniform: the photo has the same lack of distortion as a map.
Population Census	A complete and accurate count of the population that will be affected by land acquisition and related impacts. When properly conducted, the population census provides the basic information necessary for determining eligibility for compensation.
Project Affected Persons (PAP)	<p>Project Affected Persons are persons on whom the project has a direct economic and social impact. The impact may be caused by the involuntary taking of land resulting in;</p> <p>a) relocation or loss of shelter;</p> <p>b) loss of assets or access to assets;</p> <p>c) loss of income sources or means of livelihood whether or not the person should move to another location; or</p> <p>by the involuntary restriction of access to legally designated parks and protected¹ areas resulting in adverse impacts on the livelihoods of the displaced persons⁴.</p>
Resettlement	Resettlement," in Bank terminology, covers all direct economic and social losses resulting from land taking and restriction of access, together with the consequent compensatory and remedial measures ¹ .
Replacement cost	With regard to land and structures on agricultural land is defined as the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes ¹
Resettlement (Action) Plan	A resettlement action plan [RAP] is the planning document that describes what will be done to address the direct social and economic impacts associated with

⁴ Involuntary Resettlement Sourcebook, Planning and Implementing in Development Projects. 2004 World Bank

	involuntary taking of land ¹ .
Resettlement Entitlements	Resettlement entitlements with respect to a particular eligibility category are the sum total of compensation and other forms of assistance provided to displaced persons in the respective eligibility category ¹ .
Traditional Land Management Area	An area demarcated and registered as falling within the jurisdiction of a Traditional Authority ⁵ .

⁵Customary Land Act 2016, Government of Malawi

ABBREVIATIONS AND ACRONYMS

AfDB	African Development Bank
ASWAp	Agriculture Sector Wide Approach
CBRLDP	Community Based Rural Land Development Project
CCPLTRPF	Communication, Community Participation, Land Tenure and Resettlement Policy Framework
CDM	Centre for Development Management
CLB	Customary Land Bill
DC	District Commissioner
EA	Enumeration Area
ESIA	Environmental and Social Impact Assessment
FAO	Food and Agricultural Organisation (of the United Nations)
FGD	Focus Group Discussion
GoM	Government of Malawi
GRM	Grievance Redress Mechanism
GV	Group Village
GVH	Group Village Head
HH/hh	Household
IRLADP	Irrigation, Rural Livelihood and Agricultural Development Project
KAMA	Katunga-Maseya Sugar Cane Cooperative Society Limited

LTDACS	Land Tenure Diagnostic, Allocation and Consolidation Strategy
MGDS	Malawi Growth and Development Strategy
MoAIWD	Ministry of Agriculture, Irrigation and Water Development
MoLHUD	Ministry of Lands, Housing and Urban Development
NACAL	National Census of Agriculture and Livestock 2006/2007. NSO
NAP	National Agricultural Policy
PAP	Project Affected Person
PTT	Project Technical Team
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
SGVH	Senior Group Village Head
SVIP	Shire Valley Irrigation Project
TA	Traditional Authority
TFS	Technical Feasibility Study Consultant
TLMA	Traditional Land Management Area
ToR	Terms of Reference
WB	World Bank

Executive Summary

BACKGROUND

The proposed objective of the Shire Valley Irrigation Project (SVIP) is “to sustainably enhance incomes and hence food security of about 100,000 households in Chikwawa and Nsanje Districts through increased agricultural productivity and profitability by establishing market-linked smallholder farming ventures and professionally operated irrigation services in 42,500 hectares of land”⁶.

The SVIP is coordinated and managed by the SVIP Task Team, Project Technical Committee and Project Steering Committee. Several study teams are carrying out the SVIP Feasibility studies, namely: technical feasibility, hydraulic, environmental and social impact assessment, agricultural development planning strategy, public private partnership (PPP), and communication community participation land inventory and resettlement policy framework (CCPLTRPF) teams.

The Land Tenure Diagnostic, Allocation and Consolidation Strategy Report is an output deliverable of the CCPLTRPF Consultant.

REPORT SYNOPSIS

The report is divided into 3 main chapters, Land Tenure Policies and Legal Framework, Land Tenure Diagnostic Study, and Land Allocation and Consolidation Strategy.

Chapter 2 regarding the Land Tenure Policies and Legal Framework presents briefly the policies regarding Land, among these the MGDS II and the Malawi National Land Policy of 2002. The legal framework is described with the earlier land laws and the newly passed land laws, which are still to be gazetted. Land governance and the land issues challenges are also described in this chapter.

In chapter 3 the Land Tenure Diagnostic Study is presented. It consists of a land inventory approach with the description of the field investigations and how the village boundaries were defined. Land use results shows the distribution of commercial and subsistence farming, and the location and extension of the existing irrigation schemes. The results of the land tenure have identified the private land and leaseholders and the customary land areas.

Chapter 4 describes the Land Allocation and Consolidation Strategy, presenting the principles for the land consolidation and how the existing irrigation schemes can be used as models for organisation of the new irrigation blocks. It is described how the

⁶ TOR Section 2 Background

implementation of the strategy can be carried out, and how the new land acts can be used in the process. It suggests that SVIP can be used for piloting the new Land Acts.

LAND TENURE, POLICY AND LAW

Land Tenure Policies and Legal Framework related to SVIP is vested in the Constitution of Malawi, the principles in the second Malawi Growth and Development Strategy 2011-2016 (MGDS II) and in the Malawi National Land Policy from 2002, which guarantees full legal protection of customary land tenure to the people of Malawi.

Under the National Land Policy a number of new bills regarding land has been proposed, and recently (September 2016) 4 of these have been signed by the President and are now official Land Acts: The Land Act, the Customary Land Act, the Physical Planning Act and the Land Survey Act.

Especially the Customary Land Act will have an impact on the SVIP project, as it defines the *Customary Estates*, which is customary land owned, held or occupied as private land within a traditional land management area (TLMA). It also describes the creation of Customary Land Committees at Group Village level, which will have the authority to identify the customary estates within their area. When a customary estate is registered as private land under the Registered Land Act, the customary land will be given equal value as any privately owned land.

The land governance based on the present land acts is described, where the chiefs have the right to allocate the land but also is the person that can decide whether a piece of customary land can be changed to private land with a registered lease. Those procedure will be changed with the implementation of the new Customary Land Act.

LAND USE AND TENURE INVENTORY

The land inventory started with producing general land cover maps, for both Phase I and II. These maps are based on the orthophotos provided by the Department of Surveys. Information from other sources were inserted to show physical features (roads, rivers, lakes), registered land tenure, public facilities and enumeration areas. Orthophotos were used to identify the settlements and general land use.

The land inventory methodology was presented and agreed upon at the SVIP District of Chikwawa Task Force meeting in which the Traditional Authority (T/A) was present. During the months of October-December 2015 the field teams conducted village meetings and registered villages boundaries and land use together with the Group Village Heads (GVH). The results of the land inventory were 3 types of maps, Land Use maps, Land Tenure maps and maps of Local Important Sites, which can be found in Appendix A. Also a number of House Hold Questionnaires, Focus Group Discussions and Key Informant Interviews were carried out during the field survey, obtaining

information, amongst other, about land tenure and land use, which will be reported in a separate Socio-Economic Baseline Report.

The results from the field survey shows that 66% of the area within SVIP is customary and 34% private land. The high percentage of private land is due to the large sugarcane estates owned by Illovo and PressCane. Apart from these large companies only a couple of small private leases exist in the project area, mostly located within the village habitation areas.

Another important result from the field investigations is that half of the customary land in phase 1 already is organised in existing outgrowers' schemes like Kasinthula, Phata and the newest scheme KAMA as well as couple of smaller irrigation schemes. Knowledge and perception of these schemes are in general very positive.

**LAND
TENURE
DIAGNOSTIC,
ALLOCATION
AND
CONSOLIDATION
STRATEGY**

The information from the Land Use and Tenure Inventory forms the basis for the Land Tenure Diagnostic, Allocation and Consolidation Strategy (LTDACS), that will guide the land re-arrangement process required for the implementation of the SVIP. This will generally be a process of land consolidation and reallocation with some limited resettlement of villagers within their settlements. Closely related to the LTDACS is the Resettlement Policy Framework (RPF) describing how to develop fair and transparent resettlement processes to mitigate any loss of livelihood. Additionally, the Grievance Redress Mechanisms (GRM) will define processes for those affected to raise concerns and obtain feedback from the responsible agencies in a speedy, transparent and accountable manner. The GRM is attached as an appendix to this report

The LTDACS strategy related to the irrigation project is based on the principles of improved land productivity, a better distribution of the limited land resources and securing farmer's rights to the land. To realise this, land consolidation should include establishing organisational structures that regulate the use of farmland, to prevent individual farmers continuing to focus on subsistence farming in an unstructured manner. Organisation principles that are already tested and generally well known from the existing outgrowers' schemes in the area will form the basis. An overview of the existing schemes and their land diagnostic and allocation and consolidation can be found in Section 4.3.

In relation to resettlement and reallocation issues, it is important to note that all the existing schemes were established with minimal resettlement. Participating farmers obtain a share in the irrigation scheme in proportion to the land they contributed. This contribution includes land then required for irrigation infrastructure and any resettlement. Only in a few situations

where a farmer was unwilling to participate, resettlement was necessary.

Securement of rights of the landowners in the various outgrowers' schemes is addressed in the constitution that includes detailed paragraphs regarding the division and transfer of shares, which can only be done within the families or within the scheme. The shares cannot be sold to a third party, thus preventing the taking over of the customary land by private companies. Although the land remains as customary land, the cooperative or association can apply for a corporate lease to secure the rights and to establish a legal document as a basis for obtaining loans.

An overview of the implementation process for the Land Allocation and Consolidation Strategy is presented in chapter 4.6, presenting the processes and activities.

The Land Act, the Customary Land Act, the Physical Planning Act and the Land Survey Act were signed by the President in September 2016, and although the procedures and regulations are not yet in place, the SVIP project will create a good opportunity for the MoLHUD to investigate the various issues related to the definition of the TLMA's and Land Tribunals, the establishment of Local Land Committees at Group Village level and the establishment of customary estates. If funds are available, the SVIP could be used as a pilot project for the implementation of the new Land Bills, with the establishment of new Land Committees and definition of Traditional Land Management Areas (TMLA's) within the SVIP area.

The Land Allocation and Consolidation Strategy also contains an example of how the irrigation schemes can be determined organised with the help of the new established Local Land Committees, and it is estimated how many potential irrigation schemes can be established within phase 1 of SVIP.

At the end of the chapter an example is presented of how one of the irrigation schemes could be organized and the considerations related hereto.

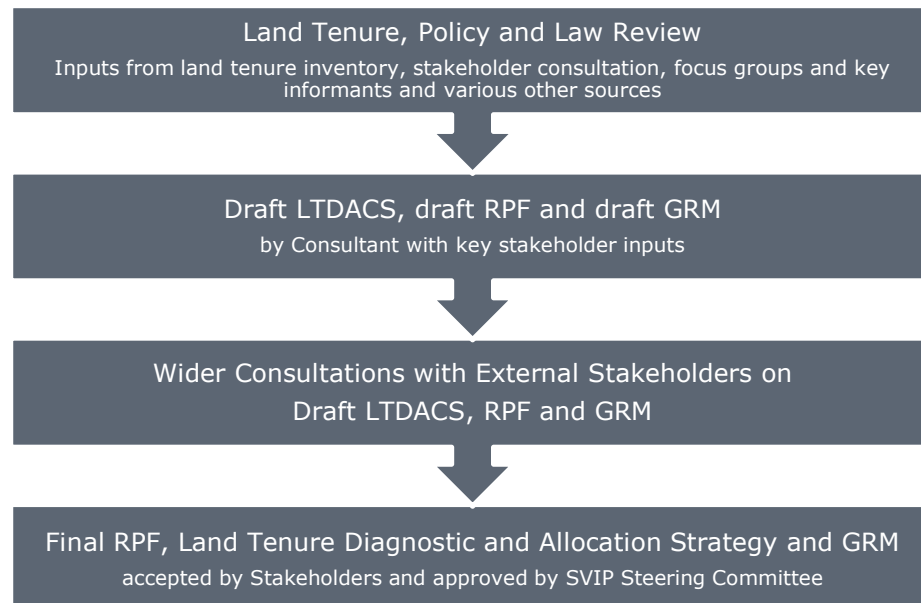
1 Introduction

This report documents the outputs from *Task V Land Tenure Diagnostic and Allocation and Consolidation Strategy* described in the CCPLTRPF terms of reference. The report is in three linked parts:

- 1 Land Tenure Policies and Legal Framework
- 2 Land Tenure Diagnostic Study
- 3 Land Allocation and Consolidation Strategy

The land tenure diagnostic study informs the land allocation and consolidation strategy, which in turn informs the Resettlement Policy Framework (RPF), as shown in *Figure 1*.

Figure 1: Overview of the approach to prepare the Land Tenure Diagnostic, Allocation and Consolidation Strategy (LTDACS), Resettlement Policy Framework (RPF) and Grievance Redress Mechanism (GRM)



2 Land Tenure, Policy and Law

This chapter contains a review of the institutional framework for land. Understanding land tenure requires some historical context to evolving land rights and law.

2.1 Policy and Legal Framework

The policy and legal framework on land resettlement in Malawi is drawn from the Constitution, National Land Policy and various pieces of legislation, which include: The Land Act, Land Acquisition Act, The Public Roads Act, The Town and Country Planning Act, The Water Resources Act, the Forestry Act and the Monuments and Relics Act. The following paragraphs highlight some resettlement related requirements, which should be adhered to with by all stakeholders when planning irrigation activities under the SVIP.

2.1.1 CONSTITUTION OF MALAWI

The 1994 Malawi Constitution provides a number of safeguards and directives regarding the manner in which property rights and resettlement should be managed, since these affect human rights and welfare of the people of Malawi⁷. Section 28 of the Malawi Constitution provides for the right to property and prohibits arbitrary deprivation of any person's property whether by a public or private entity. Section 29 gives every person the right to pursue economic activity or livelihood anywhere in Malawi. These provisions are complimented by the right to development, stipulated under section 30 of the Constitution. In particular, this provision imposes a duty on the state to protect and facilitate the realisation of social, cultural, economic and political development. In this regard, the state is required to take measures to ensure the realisation of the right to development, including facilitating "equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure"⁸. Further, the state is required "to introduce reforms aimed at eradicating social injustices and inequalities"⁹. Section 44(4) of the Constitution states that "Expropriation of property shall be permissible only when done for public utility and only when there has been adequate notification and appropriate compensation provided that there shall always be a right to appeal to a court of law."

⁷ The right to dignity accorded to every Malawian in section 19 of the Constitution requires that those exercising property expropriation must treat affected individuals and families with requisite dignity. In addition, persons exercising political and legal authority are required to do so in the interest of the people of Malawi and recognise and protect the rights and interests of women, children and other minorities, as provided for in sections 12 and 13 of the Constitution.

⁸ Section 30 (2) of the Constitution

⁹ Section 30 (3) of the Constitution

These provisions have important implications for the policy and practice of resettlement in Malawi. In the first place, the Constitution prohibits arbitrary taking of property. Hence, even in cases where legislation, such as the Land Acquisition Act, the Public Roads Act or the Electricity Act, provide for land to be acquired for public purposes such as infrastructure, the Constitution demands not only fairness and due process¹⁰, but also requires that appropriate compensation be made to those affected.

Secondly, as stipulated in section 30, the Constitution requires that any resettlement of individuals or communities must respect social, economic, cultural and political interests of those affected. Thus, resettlement policy must address not only issues of livelihoods, but the overall bundle of social economic rights that enables affected communities live meaningful and fulfilling lives in accordance with their cultural and political context. Relocations that fundamentally disrupt these cultural and political interests may therefore be subject to challenge.

2.1.2 MALAWI DEVELOPMENT AND GROWTH STRATEGY

The Malawi Growth and Development Strategy II (MGDS II) is the overarching medium term strategy for Malawi designed to attain long term development aspirations for the country. It is the reference document for all stakeholders on broad thematic areas and key priority areas, which are carefully selected to sustain and accelerate economic growth within the available resources. The thematic areas are: sustainable economic growth; social development; social support and disaster risk management; infrastructure development; governance; and gender and capacity development. Each of the thematic areas further divided into sub-themes and are also related to a number of key priority areas: Agriculture and food security; Energy, industrial development, mining and tourism; Transport infrastructure; Education, science and technology; Public health, sanitation, malaria and HIV and AIDS management; Integrated rural development; Child development, youth development and empowerment; and Climate change, natural resources and environmental management.

¹⁰ Section 43 provides that every person shall have the right to: a) lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and b) be furnished with reasons in writing for administrative action where his or her rights, freedoms, legitimate expectations or interests if those interests are known.

Land issues are dealt with as one of the sub-themes under Sustainable Economic Growth, and the key strategies listed here are:

- > Promoting land ownership and title registration;
- > Providing physical development planning standards, management guidelines and legal framework;
- > Decentralizing land administration and management functions;
- > Developing a geospatial database and establishing a national Spatial Data Centre;
- > Preparing a National Spatial Framework for Strategic Physical Development Planning and Management;
- > Raising public awareness on land related laws, policies, and procedures;
- > Developing mechanism for widespread dissemination of geographic information and digital mapping services.

2.1.3 THE MALAWI NATIONAL LAND POLICY

The Malawi National Land Policy recognises land as a basic resource for social and economic development in Malawi. To achieve this, the policy guarantees full legal protection of customary land tenure to the people of Malawi. Malawians regard access to land as a fundamental right. In line with this, Section 4.11 of the policy affirms equitable access to land to all citizens of Malawi. In line with Section 28 of the Malawi Constitution, the policy provides for the right to property and prohibits arbitrary deprivation of any person's property whether by a public or private entity, the Malawi National Land Policy states that *"compensation valuation for customary land, at the time of acquisition by the Government, should be based on the open market value of the land and all improvements on the land"*¹¹. In this regard, displaced people by the SVIP will be fairly compensated. On relocation of displaced people, the policy advocates adequate consultations between the District Commissioner's office, Traditional Authorities and the affected people so that their interests are taken care of. Details on the consultation process are provided in the policy.

2.1.4 LEGAL FRAMEWORK

Land related laws are in the process of being changed. Four new land related laws – the Land Act, 2016, Customary Land Act, 2016, Land Survey Act, 2016 and Physical Planning Act, 2016 – have been assented into law but are not yet effective. Other new laws – the Forestry (Amendment) Bill, 2016, Malawi Housing Corporation (Amendment)(No. 2), Land Acquisition and Compensation Bill 2016,

¹¹ See Section 4.16.2

Registered Land (Amendment) Bill, 2016, Public Roads (Amendment) Bill, 2016 and Local Government (Amendment) Bill, 2016 – are yet to be passed by Parliament.

These new land related laws are not yet gazetted and therefore not yet operational. They await preparation and adoption of regulations and rules. Further, implementation of the Customary Land Act, 2016 awaits passing by Parliament of the Registered Land (Amendment) Bill, 2016 as without it customary estates cannot be registered.

In view of the aforesaid, implementation of the SVP will be under the appealed laws until such a time when the new laws become effective. Consequently, the review of legal framework presents both the appealed and the new laws.

2.1.4.1 THE LAND ACT, 1965

The Land Act, 1965, mainly deals with issues of land tenure, land transfer, land use and compensation. It recognizes that every person has a natural dependency on land and that it is therefore important that Government provides for secure tenure and equitable access to land as a means of achieving socio-economic development. Among other provisions, the Act divides land into three categories namely, public land, customary land and private land. The Act does not explicitly prohibit granting of freehold title to any person, and chiefs have delegated powers from the Minister responsible for land matters to administer customary land according to prevailing customs of the area.

Section 8 of the Act vests all public and customary land in the President in perpetuity. Section 26 of the Land Act, 1965, empowers the Minister Responsible for Land Matters to allow anybody to lease customary land even without prior written consent of the Chief. This means that the Minister has extensive, overreaching powers. The Land Act, 1965 does not provide for registration of customary land, thus compromising land tenure security, as it only allows the registration of privately held land.

The Land Act, 1965 does not provide for payment of compensation in respect of customary land compulsorily acquired under the Lands Acquisition Act (58:04), compensation is only made for the improvements on the land not for the land itself; thus many customary rights holder were negatively impacted with compulsory customary land acquisitions. However, since when the Malawi National Land Policy was adopted in 2002, customary land has been compensated whenever it is acquired in the public interest or for private investments.

2.1.4.2 THE LAND ACT, 2016

The Land Act, 2016, repealing and replacing the Land Act of 1965, is the principal act with respect to land administration and management in Malawi and for all matters relating to land such as land tenure, land transfer, land use and compensation. The Act vests all land in the Republic in perpetuity, as opposed to the President as was the case with the repealed Land Act (Cap 57:01). Section 9 of the Land Act, 2016 provides that freehold land shall not be allocated or granted to any person although extant freehold titles will remain and may continue to be dealt with (i.e. transferred, mortgaged, etc.) as provided by law. The Act has two categories of land, which are public land and private land. Section 7(2) classifies Public land as Government land or unallocated customary land while Section 7(3) classifies private land as freehold, leasehold or customary estate.

Section 19 of the Land Act, 2016 provides that nothing in the Act shall be construed as preventing the registration of customary land under the Registered Land Act as private land. As such, a customary estate created under the Customary Land Act, 2016 can be registered under the Registered Land (Amendment) Bill, 2016 once the same passes into law. This will ensure tenure security and enhance investment on the land.

Another important provision in the Act is allocation of land for investment purposes to the Malawi Investment and Trade Centre Limited. It recognizes that every person has a natural dependency on land and that it is therefore important that Government provides for secure tenure and equitable access to land as a means of achieving socio-economic development.

2.1.4.3 THE LAND ACQUISITION ACT, 1971

The Lands Acquisition Act (Cap 58:04) covers procedures relating to the acquisition of land held under customary or private tenure. The Land Acquisition Act gives power to the Minister responsible for land to acquire land where he considers this is in the interest of Malawians¹². The act makes provision for preliminary investigation, preliminary survey of the area, and the procedure to be followed where land should be acquired. In addition, the Minister is given power to enter any land earmarked for acquisition, without notice, unless there is a building or an enclosure in which case seven days' notice shall be given¹³.

Section 5 makes provision for the procedure to be followed when acquiring land in accordance with the Act. A notice must be published in the Gazette and served on affected persons; and the notice must state the period upon whose expiry the affected persons must yield

¹² Section 3 of the Land Acquisition Act

¹³ Section 4 of the Land Acquisition Act

possession¹⁴. In addition, sections 9 and 10 of the act covers the steps for assessment of land, crops, fruits and other landed properties and subsequent procedures for payments of compensations to the displaced people. The act gives mandate to the Minister to assess for compensation¹⁵.

Sections 11 to 14 outlines the necessary steps for land surveying and land transfer following notices published in the government gazette. The responsibility of identifying alternative land for those affected people rests with their village headman, their traditional authority and District Commissioner of the district. The District Commissioner assists in transportation and provisions of necessary services on new sites of resettlement.

2.1.4.4 THE TOWN AND COUNTRY PLANNING ACT, 1988

The Town and Country Planning Act, is the principal act for regulating land use planning and physical developments in Malawi. The aims of regulating land uses and location of physical developments are:

- 1 To enhance orderly spatial physical growth of human settlements activities;
- 2 To enhance optimum use of land and service infrastructures; and
- 3 To protect and conserve fragile environmental systems in space.

These objectives are achieved by guiding physical developments, and controlling building uses in designated zones with regulated planning permissions. Section 40 basically prescribes environmental and socio-economic screening for medium to large scale development projects before they can be granted planning permissions under this act. Normally this screening is undertaken by local assemblies and developers of proposed large projects before they can be sanctioned under this act.

The Town and Country Planning Act recognize the need of appropriate compensations to land owners in case of compulsory acquisition of land for public interest (sections 63-65). This is in line with the provisions in the Constitution, the National Land Policy and the legal framework.

2.1.4.5 THE PHYSICAL PLANNING ACT, 2016

The Physical Planning Act, 2016, which repeals and replaces the Town and Country Planning Act of 1988, is the principal act for regulating land use planning and physical developments in Malawi both in rural and urban areas. The Act reaffirms the Land Policy recommendation of declaring the whole of Malawi a "planning area". The aims of

¹⁴ Section 6 of the Land Acquisition Act

¹⁵ Section 10 of the Land Acquisition Act

regulating land uses and location of physical developments are: a) to enhance orderly spatial physical growth of human settlements activities; b) to enhance optimum use of land and service infrastructures; and c) to protect and conserve fragile environmental systems. These objectives are achieved by guiding physical developments, and controlling building uses in designated zones with regulated planning permissions.

The Physical Planning Act, 2016, is holistic when dealing with physical planning. Section 24 prescribes what a National Physical Development Plan should consist of, including development statements, principles and background studies which among other things should cover analysis of demographic, economic, energy and environment issues, land use and land tenure. Further the Act demands that relevant authorities should consult other relevant institutions when reviewing physical plans for development. Normally this screening is undertaken by local assemblies and developers of proposed large projects before they can be sanctioned under this act.

The Physical Planning Act, 2016 recognizes the need of reasonable compensation to land owners in case of compulsory acquisition of land for public interest in accordance to sections 18 of the Land Act of 2016. This is in line with the provisions in the Malawi Constitution and the Malawi National Land Policy.

Implementation of the SVIP which will comprise twenty irrigation blocks with an approximate total area of 10,000 hectares cannot be done without technical input of physical planners. Thus application of the Physical Planning Act 2016 in the implementation of the SVIP is imperative.

2.1.4.6 THE LAND SURVEY ACT, 1955

The Land Survey Act of 1955 is a law "to make better provision for Land Surveys and the Licensing and Control of Land Surveyors and for matters incidental thereto and connected therewith." A licensed land surveyor is the only person who can prepare plans, diagrams or maps that are used for registration of a land title or a deed. Any boundaries marked or demarcated by a land surveyor are lawfully established. The method and accuracy for establishing boundaries of pieces or parcels of land is not specified in the law or regulations but if measurement is made then certain procedures and precision must be applied. Therefore, boundary corners and lines may be either precisely defined by measurement (distances and directions between corners) or by reference to the monuments or markers placed or existing on the ground or by reference to adjoining land. Since colonial times, private land has traditionally been measured precisely by 'cadastral survey' although the concept of 'general boundaries' and the use of general index maps rather than detailed plans to describe land operated in areas covered by the Land Registration Act.

2.1.4.7 THE LAND SURVEY ACT, 2016

The Land Survey Act 2016 repeals the Land Survey Act (Cap 59:03) of 1955. The Act provides for land survey and related matter to ensure provision of better land surveys and the licensing and control of Land Surveyors. The Act also provides for establishment of Land Surveyors Registration Board and Malawi Geographical Information Council. The main function of the Land Surveyors Board is to license and oversee the conduct of the surveyors. The Main functions of the Malawi Geographical Information Council are to register spatial data and to advise on policies and on technical issues relating to spatial data development, update, management, and transfer.

A licensed land surveyor is the only person who can prepare plans, diagrams or maps that are used for registration of a land title or a deed. Any boundaries marked or demarcated by a land surveyor are lawfully established. The method and accuracy for establishing boundaries of pieces or parcels of land is not specified in the law but is subject to may be defined in the regulations and rules. Equally the fees to be paid for surveying services shall be included in the regulations and rules since these are reviewed periodically. For precise location of land parcel, boundary corners and lines are defined by measurement (distances and directions between corners) and referenced to the monuments or markers placed or existing on the ground or to adjoining land. Since colonial times, private land has traditionally been measured precisely by 'cadastral survey' although the concept of 'general boundaries' and the use of general index maps rather than detailed plans were used to describe land operated in areas covered by the Land Registration Act.

2.1.5 CUSTOMARY TENURE

Customary law exists where actors consider long-established legal rules and practices as law. In Malawi, where these rules and practices vary between communities, the local customary law defines the land rights of members. Customary land is, therefore, the lands occupied and used by members of a community who live under customary law. Customary land, however, is not communal land. Most customary land is divided into pieces allocated for the use of individuals and their families. Rights to this land are usually well defined, often for exclusive use (with some exceptions), and transmissible,¹⁶ but do not extend to transfer for value (money) or outside of the community. Customary land obligations often include allowing open access to post-harvest land for common grazing.

2.1.5.1 THE CUSTOMARY LAND ACT, 2016

The Customary Land Act, 2016 is the main act in customary land administration and management in Malawi. The Act establishes *customary estates*, which is customary land owned, held or occupied as private land within a traditional land management area and which is

¹⁶ Transferable by process of law, usually through inheritance.

registered as private land under the Registered Land Act. As such, customary will no longer be treated as valueless commodity, but will be given equal value as any privately owned land such as leasehold or freehold.

In terms of operation, the Customary Land Act 2016 creates Customary Land Committees (CLCs) at group village (GV) level to manage land within a Traditional Land management Area (TLMA). A CLC will be chaired by a Group Village Head (GVH) and will have six elected members from the community, three of which will be women. In discharging its duties a CLC shall, among other considerations, have regard for the principle of sustainable development and the relationship between land use, natural resources and the environment contiguous to the customary land; seek and consider views of other local government authorities having jurisdiction in the TLMA; and not allocate land or grant a customary estate without the prior approval of the relevant Traditional Authority. Local government authorities shall provide advice and guidance, and will oversee the operations of the CLCs.

Land dispute resolution under the Customary Land Act, 2016 will be through land tribunals. These will be Customary Land Tribunal at traditional Authority level (to be chaired by the T/A for TLMA), District Land Tribunal (to be chaired by the District Commissioner) and Central Land Board (to be presided a Resident Magistrate). The Act prescribes the minimum number of women to serve in each land tribunal. If the complainant is not satisfied with a decision of a land tribunal, he or she can appeal to the next level or a higher court.

The Customary Land Act, 2016 was adopted in Parliament in the beginning of July 2016 and signed by the president in the middle of September 2016. The Customary Land Act has now become the law, but will not be in operation until the effective date is gazetted and reached. The regulations for the implementations have not been published yet and in the meantime the old laws will remain in existence.

2.1.5.2 THE PUBLIC ROADS ACT, 1962

The Public Roads Act (Cap 69:02) covers the management of road reserves and streets. Land acquisition and resettlement issues are outlined in part II of the act. Section 44 provides assessment of compensations, which can be paid under this act. The compensations cover surface and land rights of the owner or occupier of land. Section 45 provides for compensation for conversion of land into public use. In case of customary land, compensation is paid in respect of disturbance to people in terms of possible relocation, loss of land and that alternative land may not be as good as the land which has been lost. Section 49 and section 50 provide opportunities for land owners or occupiers to appeal to the High Court on grievances related to resettlement and compensations provided for in this act.

The Public Roads Act (amendment) is awaiting Parliament approval. The main thrust of the amendment is to align the Act with the Land Act, 2016 and the Customary Land Act, 2016 among others.

2.1.5.3 THE WATER RESOURCES ACT NO.2 OF 2013

Water Resources Act No. 2 of 2013 is the principal statute whose objective is to promote the rational management and use of the water resources of Malawi through, among others, the progressive introduction and application of appropriate standards and techniques for the investigation, use, control, protection, management and administration of water resources by government agents and the general public. The Act establishes a National Water Resources Authority, whose powers and functions include; (a) to develop principles, guidelines and procedures for the allocation of water resources; (b) to monitor, and from time to time reassess, the National Water Policy and the National Water Resources Master Plan; (c) to receive and determine applications for permits for water use; (d) to monitor and enforce conditions attached to permits for water use; (e) to regulate and protect water resources quality from adverse impacts and to manage and protect water catchments, among others. All these are designed to ensure sustainable use of the water resource. Further, the National Water Resources Board regulates the locations of dams in order to minimise risks and conflicts among users of dambo land and water resources.

2.1.5.4 THE FOREST ACT, 1997

The Forestry Act number 11 of 1997 affirms the role of Department of Forestry on control, protection and management of forest reserves and protected forest areas. In addition, the act recognizes the need to promote participatory social forestry and empowerment of communities for conservation and management of trees within the country. In this regard, the act encourages community involvement in woodlots and management of forest reserves through co-management approaches. Section 86 of Forestry Act has provided guidelines on values/rates for sale of both indigenous trees and exotic trees. These rates are gazetted, and are reviewed from time to time on need basis to reflect current values by authorities. The values are used to calculate compensation to people who may lose timber and fruit trees.

2.1.5.5 THE MONUMENTS AND RELICS ACT, 1991

The Act stipulates the proper management and conservation of monuments that are of importance, both nationally and locally. It also provides for proper preservation of monuments in the event that there is a change in the use or development of land. This gives room for the authorities for monuments and relics to protect monuments under the provisions of the Land Act or the Lands Acquisition Act. The route of the canal may pose a danger to some archaeological, cultural and spiritual sites and graveyards. Utmost care is being taken to ensure that the canal alignment avoids such place to the extent possible. This

is being done through consultations with traditional leaders in the area and government officials at national and district levels.

2.1.6 IMPLEMENTATION OF THE NEW LAND RELATED ACT

For the new land laws to be implemented they will require regulations and rules to be developed as well as the passing of enabling law, the Land Registration (Amendment) Bill 2016. This is critical as registration of customary estates as provided for by the Customary Land Act 2016 would not be possible without the Land Registration (Amendment) Bill 2016 passed into law. The development of the regulation and rules will take time. For the regulations to be relevant there is need to pilot some aspects of the Customary Land Act 2016 during the implementation of the SVIP. Already the EU funded project on Strengthening Land Governance is funding a pilot project on Customary Land Act 2016 in three districts of Mzimba, Kasungu and Phalombe. The pilot will test the application of the Act in patrilineal and matrilineal societies as well as in an area where there was massive conversion of customary land into leasehold.

2.2 Land Governance

Until recently, the Land Act 1965 gave the Minister responsible for land overall power over land administration. In particular, Part II and Part V of the Act empower to the Minister to control and administer customary and public land.

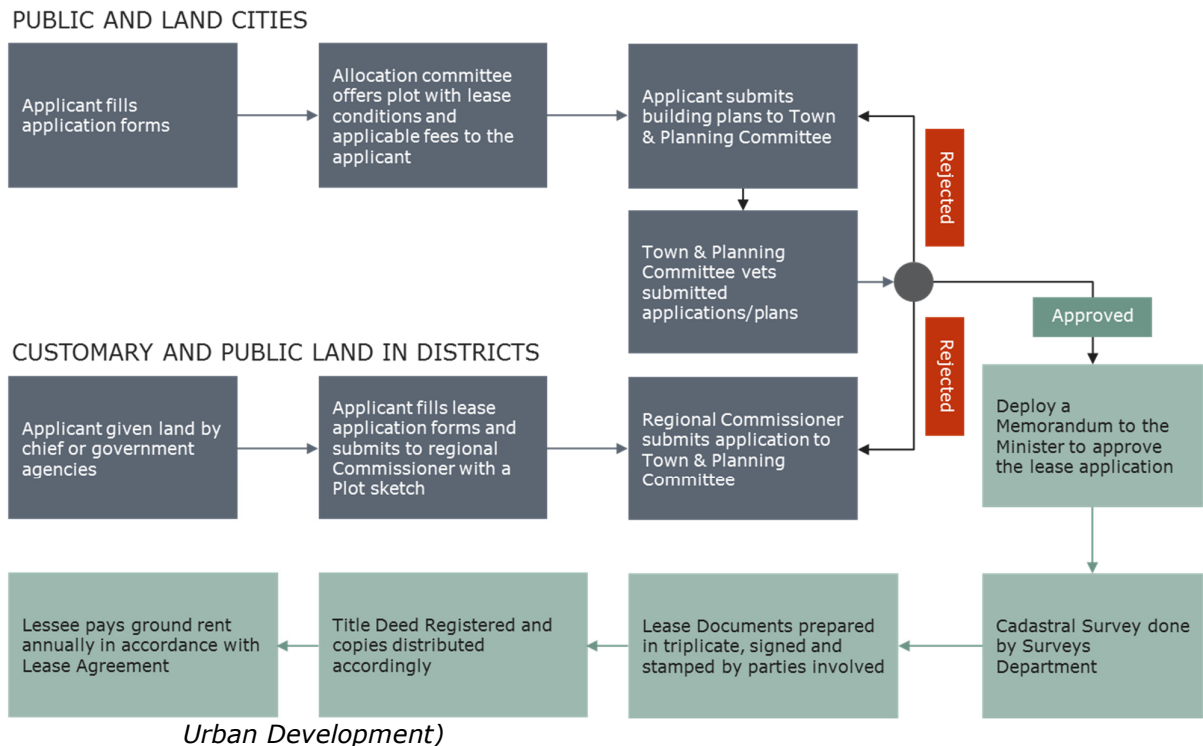
In relation to customary land, the Act states that a Chief may, subject to the general or special directions of the Minister, authorize the use and occupation of customary land. This provision clearly makes chiefs beneficiaries of delegated authority as determined by the Minister. However, in practice the mandate for use and occupation of customary land is vested in the chiefs who allocate land to families or lineages who thereafter control access to land based on the family relationships existing in the area. This control is sometimes tenuous because of the overriding mandate that the Minister can exercise under the Act.

The Land Act provides that the Minister can regulate, manage or control the use of any non-urban land.¹⁷ In practice, this has meant that a person who requires agricultural land to lease first approaches a chief. The chief upon being satisfied of the availability of land will endorse the application that is then sent to the District Commissioner who then passes on to the Department of Lands and Valuation. A survey is undertaken followed by preparation of a deed plan by the Department of Surveys. A lease agreement will then be drafted by the Department of Lands and Valuation and will be signed by the Minister as prepared between the Lessor (the state) and the lessee (the applicant). The lease has the necessary covenants regulating tenure as

¹⁷ LA s31

well as use and management of the land. The process is cumbersome, costly and open to abuse, and there are accounts of land provided to outsiders against the wishes of the community.¹⁸ In such cases, if the community disputes the issuing of a lease, the customary law mandates the traditional authority (chief) to adjudicate on cases involving customary land. However, matters can go to court but currently there is a substantial backlog of cases and therefore many disputes over land remain unresolved and fester into more conflict.¹⁹ Figure 2 shows the process flow for acquiring a lease.

Figure 2: Land lease acquisition process (Ministry of Lands, Housing and



The Land Governance Assessment Framework (LGAF) study in 2012 found that "there are a number of public institutions and statutory agencies dealing with land matters [and this] creates confusion and overlaps over jurisdiction." The study recommends reducing the number and improving inter-agency coordination. The Ministry of Lands, Housing and Urban Development has recently consolidated and reduced its departments to four (land and valuation, housing and urban development, physical planning, and surveys). The function of land registration, of both deeds and title, lies within the lands and valuation department. The LGAF study reveals that there is land governance overlap with the Ministry of Local Government and Rural Development, and with traditional authorities where customary areas

¹⁸ LandNet and Oxfam 2014

¹⁹ Ibid

and urban areas overlap. The LGAF study also reveals that although the National Land Policy primarily guides the MoLHUD, departments within the Ministry have different policies, such as the Land Use and Management Policy, as well as other Ministries having other policies.

The land governance institutions proposed under the National Land Policy 2002, the Land Act 2016 and the Customary Land Act 2016 seek to address some of the concerns regarding powers of allocation of customary land and dispute resolution mechanisms. Thus, the Customary Land Act provides for the establishment of the Land Committee to be responsible for land allocation while a Land Tribunal will be responsible for adjudicating land disputes. These are elected bodies and should therefore commend some confidence among the local communities and in some way reduce the incidence of rent seeking by persons in authority.

2.3 Land Issues and Challenges

Malawi faces a number of challenges including inequitable distribution, limited access to land and benefits arising from it, under resourced land administration institutions, insecure tenure regimes, weak institutional capacity, unsustainable utilization leading to different forms of degradation, limited investment, conflicting sectoral land related policies and lack of other policies such as National Land Use Planning Policy.²⁰ The LGAF study gives a detailed overview of these in the context of land governance and provides numerous recommendation in support of and addition to the recommendations of the Commission of Inquiry on Land Policy Reform, some of which are already implemented such as the MoLHUD reducing its number of departments.

In the context of rural development and the projects such as SVIP, the key land issues and challenges include:

- > Weakening customary law and authority, with land control devolving to families and individuals because of land scarcity, governance concerns and greater awareness of universal rights (e.g. gender).
- > Lack of support for the Land and Customary Land Bills arising out of concerns about gaps and omissions in the draft laws and compliance with the National Land Policy.
- > Lack of capacity to implement policy and legislation and to sustain programme, in particular the proposed requirements in the draft new laws for the formation of land committees and creation of local land registries, for demarcating and surveying all traditional areas, villages and public lands, and providing continual information, education and

²⁰ Land Governance Assessment Framework 2012

communication for stakeholders to engender support and active participation.

When looking specifically at the implementation of the SVIP project, the main challenges are mostly related to the new land acts and includes:

- 1 Development, testing and introduction of the regulations and rules to implement the newly passed Land Acts.
- 2 Source the finance to implement the new laws and to identify the extension of the TLMAs.
- 3 Establishment of the land tribunals and land committees and capacitate the members, enabling them to create customary estates.
- 4 Source finances to survey and demarcate the customary estates and issue leases for cooperatives and individuals according to the Customary Land Act. Will it be necessary to demarcate and survey each individual plot or can the land be registered under the Land Registration Act, so the land can be defined with general boundaries, delineated on a suitable scale map, and without cadastral survey.
- 5 Pass and implement the remaining land bills.

2.4 International and Regional Frameworks

The Land Policy Initiative (LPI) is a joint programme of the African Union, African Development Bank (AfDB) and United Nations Economic Commission for Africa (ECA). Its purpose is to enable the use of land to lend impetus to the process of African development. This initiative provides a framework for the development and implementation of land policy and guidelines on large-scale land based investments, among other things. Implementation of a land policy considers lack of capacity to manage and sustain change, inadequacy of infrastructure and financial resources, and failure to appreciate the need and value of monitoring and evaluation from baseline data and appropriate indicators of progress. All pertinent in the Malawian context.

Box 1: VGGT Safeguards – in allocating rights to protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights

7.3 Where States intend to recognize or allocate tenure rights, they should first identify all existing tenure rights and right holders, whether recorded or not. Indigenous peoples and other communities with customary tenure systems, smallholders and anyone else who could be affected should be included in the consultation process. States should provide access to justice, consistent with paragraph 4.9 if people believe their tenure rights are not recognized.

7.4 States should ensure that women and men enjoy the same rights in the newly recognized tenure rights, and that those rights are reflected in records.

7.5 States should ensure that people whose tenure rights are recognized or who are allocated new tenure rights have full knowledge of their rights and also their duties.

The LPI land policy guidelines are closely aligned to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT). These voluntary guidelines contains some important principles and recommendations applicable when development interventions affect customary tenures and rights through reform, consolidation and allocation.

Box 2: VGGT Land consolidation and other readjustment approaches

- 13.1 Where appropriate, States may consider land consolidation, exchanges or other voluntary approaches for the readjustment of parcels or holdings to assist owners and users to improve the layout and use of their parcels or holdings, including for the promotion of food security and rural development in a sustainable manner. States should ensure that all actions are consistent with their obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, and ensure that participants are at least as well off after the schemes compared with before. These approaches should be used to coordinate the preferences of multiple owners and users in a single legitimate readjustment.*
- 13.3 Where appropriate, States may consider encouraging and facilitating land consolidation and land banks in environmental protection and infrastructure projects to facilitate the acquisition of private land for such public projects, and to provide affected owners, farmers and small-scale food producers with land in compensation that will allow them to continue, and even increase, production.*
- 13.4 Where fragmentation of smallholder family farms and forests into many parcels increases production costs, States may consider land consolidation and land banks to improve the structure of those farms and forests. States should refrain from using land consolidation where fragmentation provides benefits, such as risk reduction or crop diversification. Land consolidation projects to restructure farms should be integrated with support programmes for farmers, such as the rehabilitation of irrigation systems and local roads. Measures should be developed to protect the investment of land consolidation by restricting the future subdivision of consolidated parcels.*
- 13.5 States should establish strategies for readjustment approaches that fit particular local requirements. Such strategies should be socially, economically and environmentally sustainable, and gender sensitive.*
- 13.6 States should establish appropriate safeguards in projects using readjustment approaches. Any individuals, communities or peoples likely to be affected by a project should be contacted and provided with sufficient information in applicable languages. Technical and legal support should be provided. Participatory and gender-sensitive approaches should be used taking into account rights of indigenous peoples. Environmental safeguards should be established to prevent or minimize degradation and loss of biodiversity and reward changes that foster good land management, best practices and reclamation.*

Box 3: VGGT Resolution of disputes over tenure rights

- 21.1 States should provide access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide effective remedies and a right to appeal. Such remedies should be promptly enforced. States should make available, to all, mechanisms to avoid or resolve potential disputes at the preliminary stage, either within the implementing agency or externally. Dispute resolution services should be accessible to all, women and men, in terms of location, language and procedures.*
- 21.2 States may consider introducing specialized tribunals or bodies that deal solely with disputes over tenure rights, and creating expert positions within the judicial authorities to deal with technical matters. States may also consider special tribunals to deal with disputes over regulated spatial planning, surveys and valuation.*
- 21.3 States should strengthen and develop alternative forms of dispute resolution, especially at the local level. Where customary or other established forms of dispute settlement exist they should provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights.*
- 21.4 States may consider using implementing agencies to resolve disputes within their technical expertise, such as those responsible for surveying to resolve boundary disputes between individual parcels within national contexts. Decisions should be delivered in writing and based on objective reasoning, and there should be a right to appeal to the judicial authorities.*
- 21.5 States should endeavour to prevent corruption in dispute resolution processes.*
- 21.6 In providing dispute resolution mechanisms, States should strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination. Judicial authorities and other bodies should ensure that their staff have the necessary skills and competencies to provide such services.*

3 Land Use and Tenure Inventory

3.1 Introduction

Present day land holdings and land use in the Shire Valley has evolved over time within the institutional framework described in the previous chapter. It has also evolved due to increasing populations and inward migrations of people in search of fertile agricultural land. Using the following primary data sources, the facts of present day land tenure and use are established:

- > CCPLTRPF land inventory
- > CCPLTRPF household survey
- > CCPLTRPF focus groups and key informant interviews
- > NSO Integrated Household Survey 2010/2011
- > National Census of Agriculture and Livestock 2006/07

The CCPLTRPF land inventory is based on the orthophotos obtained from the Department of Survey and overlaid with existing information from various sources such as registered land tenure, educational institutions, and health facilities. Other maps, such as 1/50.000 maps from the MoLHUDDepartment of Lands and Survey and the National Statistical Office (NSO) provide a spatial backdrop and base for the land inventory. Generally, similar areas of land use, such as crop cultivation, are identifiable and delineable on the orthophotos. Settlements, grazing, wetlands, sugar cane plantations, and other land uses have been mapped and shown as closed polygons on two general land use maps for SVIP phase 1 and phase 2 areas.

The CCPLTRPF baseline/ household survey is a sample survey of 980 households located in the SVIP phase 1 and 2 areas, plus 77 households in control areas, a total of 1057 households. A randomised approach identified each household for the questionnaire survey (see Socio Economic Baseline Report). The questionnaire includes specific questions on land tenure and use, including the prevalence of disputes and methods currently used to resolve them. Similarly, the focus groups and key informant interviews held in a semi-structured, pre-prepared format, included land use and tenure questions.

The NSO surveys of households and agriculture and livestock, carried out in 2010/11 and 2006/7 respectively, provide supplementary and validating land use and tenure data.

3.2 Land Inventory Approach

The exact project boundaries of the SVIP area were not known at the time of the first round of field registrations, which took place from October to December 2015. The preliminary boundaries were received from the Technical Feasibility Study Consultant, who had identified the arable land potential to be included in future irrigation schemes, and had suggested a more logical division between Phase I and II. As a result Area A, which originally was part of Phase II, was included in Phase I. Phase II will only consist of the areas south of Lengwe National Park. In January 2016 the Technical Feasibility Study Consultant revised the canal route and the project area. The map in Figure 3 shows the adjusted phase I and Phase II areas.

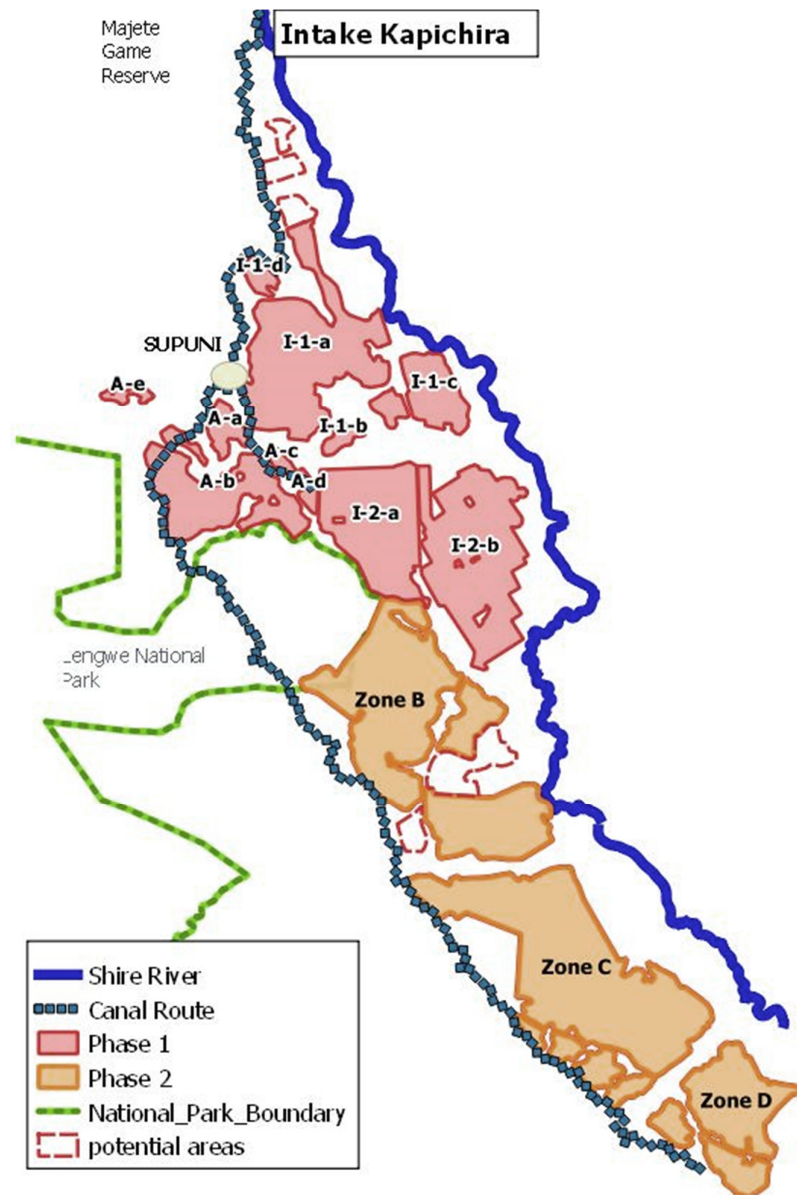


Figure 3 Map from October 2016 of the adjusted SVIP Phase I-II areas

Before the start of the field study, information was needed on the canal route and approximate areas that can be irrigated. At the same time the field study had to be completed before the onset of the rainy season due to the inaccessibility of the area in the wet season. When the canal route was still not defined in September, it was decided to cover a larger area than indicated by the Technical Feasibility Study Consultant, resulting in about 60,000 hectares being covered, about one third more than the 42,500 has mentioned in the TOR. Information on the canal route and possible irrigation areas received at the end of January 2016, showed that some areas were still not covered in both phases and other potential areas identified. These additional areas were then investigated during new round of field activities in September and October 2016, including a total survey of

the group villages and villages from the start at the intake at Kapichira Dam in Majete to the northern end of the original project boundaries.

The General Map for each Phase I and II was prepared by inserting information from existing sources. The main sources of information were: 1) the Ministry of Lands, Housing and Urban Development, 2) NSO, 3) the MoAIWD and 4) the Districts. The existing information comprised of:

- > Physical features such as roads, rivers, streams, and lakes.
- > Registered land tenure, e.g. private land held in leasehold or freehold, customary land, public land, national parks and conservation areas, forests.
- > Public facilities such as educational institutions, health facilities and improved water sources.
- > Enumeration areas by the NSO in the 2008 Census.

The combined information has been digitized and/or copied into the orthophotos and the orthophotos analysed. Together, this information resulted in a general land use base maps that provide an overview of the potential communities and registered private landowners affected by the project. These maps are loaded onto tablets together with an application to record boundaries and insert location of specific places and used for data collection and verification in the field.

3.2.1 REGULAR CONSULTATION WITH THE TECHNICAL FEASIBILITY AND OTHER SVIP CONSULTANTS

The CCPLTRPF Consultant is in regular contact with the Technical Feasibility Consultants to ensure the work is coordinated and data are compatible. The Technical Feasibility Consultants provided the CCPLTRPF Consultants with, among others, the location of the area that could be irrigated from a technical point of view and the location of the main canal route.

Regular consultation takes place to compare notes and share data. Maps used by the field study teams were updated when useful additional data became available.

The Project Technical Team Coordinator was organising monthly meetings with the consultants of the study teams until the end of 2015 and thereafter bi-weekly. In these meetings the consultants updated each other on the progress made and the plans for the future. Common issues are being discussed and agreed upon and information shared and comments on drafts invited.

3.2.2 INVOLVEMENT OF GOVERNMENT AND OTHER STAKEHOLDERS

The Government and Traditional Authority are the main stakeholders concerning the management of land tenure. These stakeholders are informed and consulted regularly during the process of the SVIP studies and land tenure and use inventory. This section describes the main officials that have been informed and consulted so far. Involvement of stakeholders during the process and in the verification of data is integrated in the approach and described throughout this chapter.

3.2.3 LAND OFFICE OFFICIALS

Regular meetings and consultations have been and are taking place with Government of Malawi Land Office Officials at national, regional and district levels. For example, a number of meetings were held with the Lands Officer in Blantyre who provided us with the information on leasehold applications within the SVIP area. This information has been inserted into the orthophotos, but unfortunately it was not possible to get a verification of the data, and an additional investigation will have to be carried out before the implementation of the project to verify whether all the identified lease applications are valid.

Other meetings were held with the PS of the MoLHUD and Officials of the District Council.

3.2.4 DISTRICT COUNCIL MEETING

A first District Council Meeting was held on the 29th of September 2015 at Chikwawa in which the PTT presented the SVIP and announced the start of the studies. Consultants gave a short presentation on their approach to the studies and answered questions. Several meetings has since been held with the District Council.

Prior to the District Council Meetings various other meetings were held with District Officials as a group and individually.

3.2.5 DISTRICT SVIP DISTRICT OF CHIKWAWA TASK FORCE AND TA WORKSHOP ON THE APPROACH

The District Council of Chikwawa established a SVIP District of Chikwawa Task Force specifically for the SVIP on the request of the SVIP Management. The Committee consists of 13 members²¹.

Before the field investigations commenced a SVIP District of Chikwawa Task Force and TA Workshop was held to present and discuss the CCPLTRPF Consultant's approach to the Land Tenure and Use Inventory. In the workshop an overview of the new Land Policy and draft Land and Customary Bills were also presented and discussed, especially in relation to the possibility for the customary land to obtain a lease and how the new land policy more will secure the rights of women and youth.

Participants agreed to the approach of the CCPLTRPF Consultant to the land tenure and land use inventory without changes. They also agreed, that as the new lands bills were not yet official laws by that time, it was too premature to work according to these draft laws and, for example, set up the land tribunals and land committees that will identify the TLMA's within each TA. It was, however, possible to establish the basis for these future definitions by working closely together with the Traditional Authorities, the Chiefs, Group Village Headmen and the Village Headmen to identify the village boundaries and register disputes as in this approach to LTDACS²².

3.2.6 TRADITIONAL AUTHORITY, GROUP VILLAGE HEADS AND VILLAGE HEADS

Traditional authority at Paramount Chief and Chief level was well present in the District Council Meeting and the SVIP District of Chikwawa Task Force Workshop as well as other meetings held in connection with the SVIP, like awareness meetings and meetings where the results of the field studies were presented.

It has been paramount for a successful introduction of the project ideas to the villagers that there has been a close collaboration with the Group Village Heads (GVHs) and the VHs in various T/As and part of this process has been to identify which GVs and villages would be directly affected by the irrigation schemes and therefore needed to be

21 1) Director of Planning and Development, 2) District Irrigation Officer, 3) District Agricultural Officer, 4) Environmental District Officer, 5) District Forestry Officer, 6) District Community Development Officer, 7) District Youth Officer, 8) Monitoring and Evaluation Officer, 9) Phata Representatives, 10) Kasinthula Representatives, 11) National Initiative for Civic Education, Principal Administration Officer (representing Traditional Authority), 13) District Lands Officer

22 Registration and resolving disputes related to the SVIP are described in the Grievance Redress Mechanism.

involved in activities such as information and awareness meetings, information pamphlets and other forms of outreach.

One example is that a number of suggestion boxes have been placed at the GVH locations throughout phase 1, and people have been encouraged to produce feedbacks in form of questions and suggestions. These initiatives have been received very well, and often more than hundred comments have been placed in the suggestion boxes, generally positive responses to the SVIP but also with concerns about losing land, sufficient compensation etc.

3.3 Land Tenure and Land Use Mapping Team

The verification and collection of land tenure and land use field data was done using hand held tablets installed with a GIS program called GIS4Mobile. A team of 8 field workers were trained to work with the program, and they were covering the whole project area on foot registering the land tenure and land use. The layers controlled and registered in this way consist of both lines like roads and rivers, closed areas like village boundaries and crop or grazing fields, and individual points like location of school, health clinic, religious site, etc. The type of field data collected is shown below in Table 1.

Table 1 List of features registered in the field

Layers	Sub-layers
Roads/Rivers	Main Roads
	District Roads
	Secondary roads
	Tertiary roads
	Other roads
	Foot path
	Cattle migration routes
Rivers	Rivers
	Streams
	Irrigation furrows/channels
Areas	Village boundaries

Layers	Sub-layers
	Village habitation areas
	BOMA boundaries
	Boundary Conflicts
	Existing leases
	Subsistence crop areas
	Commercial farming
	Grazing areas
	Forest areas
	Dambos (wetlands)
	Common areas
	Areas of conflict
	Religious/Cultural sites
Local POIs	Community center
	School
	Health Clinic
	Location of Chief/Headman
	Well/water pump

3.4 Defining Village Boundaries

The land tenure issues related to the SVIP project is focused on establishing both a land tenure overview of all the land within the project areas (customary land, private land and public land) and at the same time identify village boundaries and macro areas, such as livestock movement corridors, settlement areas, common areas for grazing or wood collection, flooding areas, graveyards etc.

Especially the village boundaries have never been clearly identified before within the customary land. The new land laws propose to

register customary land areas and the World Bank has recommended in the Aide Memoire from their Mission in June 2015 that the project should include some of the elements proposed in the new Land Policy Reform. Defining the Traditional Land Management Areas (TLMA's) which later on can form the base for issuing leases for customary land, is one of these aspects.

Consequently, land tenure registration was carried out in cooperation with the Traditional Authorities by walking the boundaries of the individual villages together with the Group Village Headmen, and at the same digitizing these on a tablet. During the field study new settlements were identified and registered together with the area Head (wo)men. Also boundary disputes were registered.

The result of the first registration was an up-to-date map of the customary land tenure covering around 60,000 hectares. After the second field registration the coverage of Group Villages and Villages including the land tenure and land use is close to 80,000 hectares for both phase 1 and 2.

During the registration process in the area it has become clear that the traditional hierarchy with Chiefs of T/As, Group Villages Heads and Village Heads is quite dynamic, since the villages and settlements gradually expands with the growing population and very often one village turns out to be several with the same name, like Chikhambi 1, 2 and 3. In the same way the villagers themselves recognizes themselves to be part of a village group, which has not been officially gazetted and recognized by the District Council.

In several cases the original gazetted village groups in the T/A hierarchy has changed and are now recognized as Senior Group Villages with appointed Senior Group Village Heads, which often speaks for 4-5 GVHs. This has mostly been the case in phase 1, where the population density is higher than in phase 2.

Consequently the definition of village boundaries both clarify the actual boundaries between the various communities and gives an actualization of the traditional authorities' structure within the SVIP area, which is important for understanding the area and for establishing the Customary Estates in the near future.

The following presents an overview of the identified Senior Group Villages and Group Villages within phase 1. In total 45 GVs or SGVs have been identified in the process, where only 13 of those are officially gazetted and recognized by the District Council.

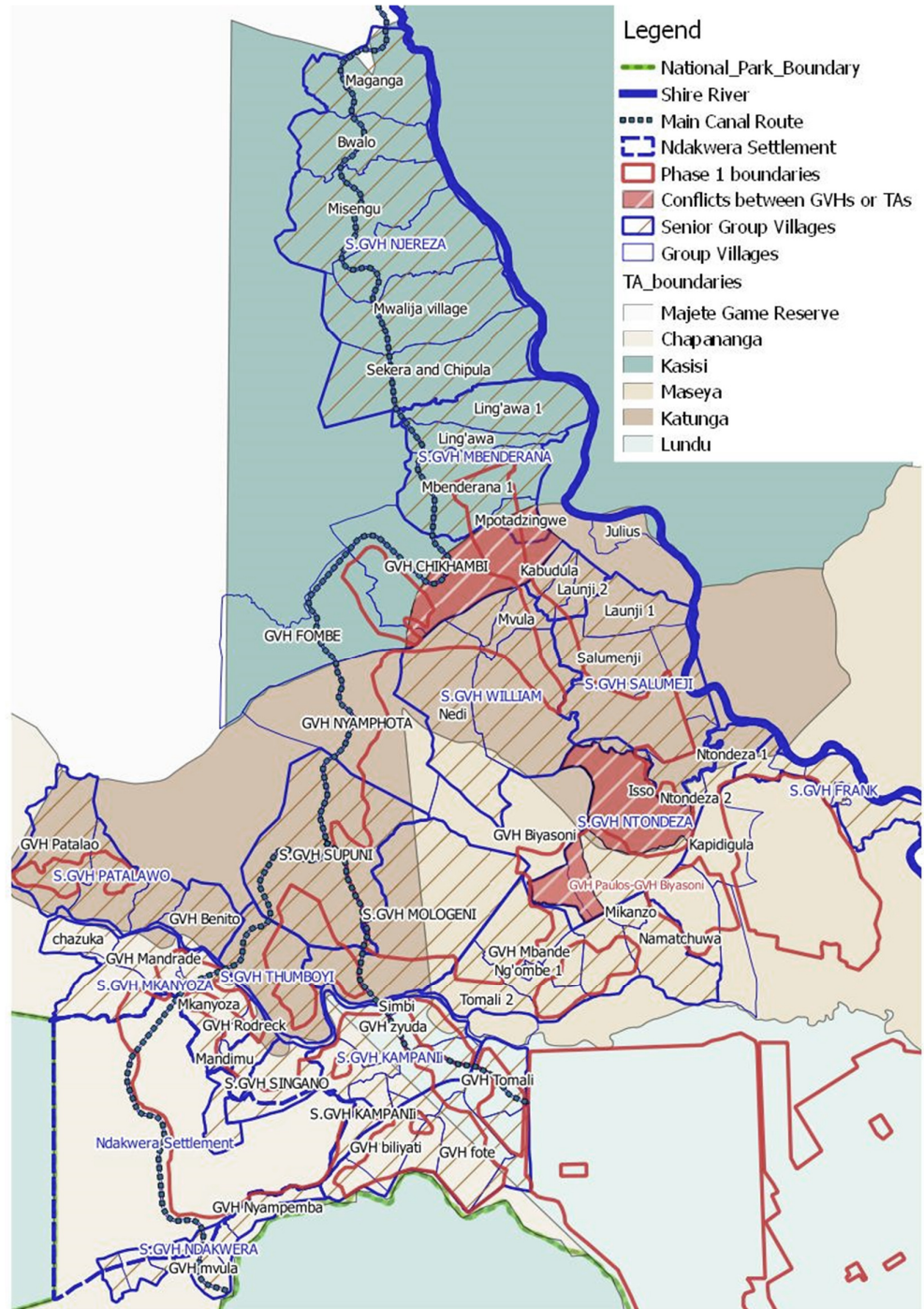
Table 2 Group Villages affected by Phase 1

OVERVIEW OF GROUP VILLAGE HEADS AFFECTED BY THE SVIP PROJECT					
TA	no.	GVH according to District Council	GVH registered in field	Senior GV	comments
LUNDU	71	Mangulenje	Tomali/Mangulenje	x	
			Kampani	x	
			Jailos		part in Ndakwera
			Zyuda		
			Mphampha		
MASEYA	63	Frank	Frank	x	
	64	Kalima	Kalima		east of Phata
	66	Mbande	Mbande	x	
	67	Mtondeza	Ntondeza	x	part in Katunga
			Mologeni	x	part in Katunga
			William	x	
			Biyasoni		
			Chambuluka		
			Kadzumba		
			Zimola		
			Katemalinga		
NDAKWERA (Chapananga)	30	NDAKWERA	Ndakwera	x	west of canal
	31	Kampami	Kampani	x	

OVERVIEW OF GROUP VILLAGE HEADS AFFECTED BY THE SVIP PROJECT					
TA	no.	GVH according to District Council	GVH registered in field	Senior GV	comments
	33	Mkanyoza	Mkanyoza	x	
			Sigano	x	
			Mangulenje	x	
			Mandrade		
			Farao		
			Fote		part in Lundu
			Biliyati		
			Dironi		
			Rodreck		
			Mvula		
			Nyampemba		
			Ingadzi		part in Lundu
			Nkhabeka		
			Thimba		
KATUNGA	51	Salumeji	Salumeji	x	
	54	Patalao	Patalao	x	
			Supuni	x	
			Thuboyi	x	
			Benito		
			Chinangwa		

OVERVIEW OF GROUP VILLAGE HEADS AFFECTED BY THE SVIP PROJECT					
TA	no.	GVH according to District Council	GVH registered in field	Senior GV	comments
			Paulos		part in Maseya
			Nyamphota		
			Chikadayenda		
KASISI	41	Chikhambi	Chikhambi		
	43	Mbenderana	Mbenderana	x	
	44	Njereza	Njereza	x	
			Fombe		
Total GVHs in SVIP		13	45		

Figure 4 Map of affected Group Villages in Phase 1



3.4.1 NDAKWERA SETTLEMENT SCHEME

As can be seen in the map above a scheme called Ndakwera Settlement was identified during the second round of field investigations in the south-western corner of phase 1, in the sub T/A of Ndakwera (under TA Chapananga) It is an organisation of the smallholders somewhat different from the traditional structures in the area. It has the following characteristics:

- > The scheme was established in 1972 when people were moved from the areas under Lundu that Sugar Company of Malawi (SUCOMA) now Illovo, occupied.
- > According to the Chairman of the Committee, the scheme is divided into part 1 and 2 of 1,001 hectares while part 3 and 4 is 1,008 hectares making the whole area to be 2,009 hectares. The scheme digitized from the topographic maps are bigger than this, around 3,650 hectares.
- > It started with 807 Farming Family Households (FFHs), currently there are 1,027
- > The scheme is run by a committee of the scheme chosen among the members of the scheme.
- > Currently, the committee is being headed by Christopher Nyampemba who is the current Chairperson of the Ndakwera Settlement Scheme.
- > People surrounding the scheme from GVs: Mkanyoza, Nyampemba, Singano, Mvula, Ndakwera, Company, Madrade are members of the scheme.
- > One applies for the land through the committee to acquire land in the scheme.
- > The land is the property of the scheme and no one can sell the land. The land reverts to the scheme if one is no longer interested to cultivate the parcel.

- > Parcels are given to individual farmers to cultivate, and they are not used to the idea of working as a cooperative.
- > There are 15 executive committee members
- > Grazing area is the reserved land not cultivated within the scheme
- > They use 1972 bylaws and have a constitution with a map
- > All land related issue (such as disputes and misunderstandings) on Ndakwera Settlement Scheme is handled by the Committee.
- > No chief can claim the land as under his jurisdiction or try to solve problems unless he is in the committee acting on the authority of the committee.

A number of sensitization meetings were held in the area in October 2016 together with representatives from the District Committee and from Phata Outgrowers. The meetings gave a general overview of the project and explained the experiences from the Phata cooperative and how the communities can establish share owned irrigation schemes and what they can benefit from them.

3.5 Defining Land Use Areas within the VillageAreas

Together with the registration of the land tenure a detailed registration of the land use was carried out, identifying settlement areas within each village or group village, areas with crops (both subsistence crops and commercial farming areas), common areas for grazing or wood collection, existing irrigation schemes, areas of special cultural and religious significance. Points of importance like schools, health clinics, graveyards, cultural sites, etc., were also registered and digitized. The cultivation areas were identified with their main crop, and any secondary crop as well.

3.6 Land Use Results

General land use in both SVIP phase areas is summarised in Table 3 below. The table includes all the GVHs/VHs possible affected within the SVIP area, including the potential irrigation areas towards Majete for Phase I. For Phase 2 the table shows all the GVHs/VHs possibly affected in original SVIP area (not including additional land due to a later change of the canal).

Table 3: SVIP general land uses, total area registered in hectares in Phase I

	Commercial farming	Settlement areas	Subsistence crops	Common areas	Forest Areas	Grazing areas	Wetlands	Grave yards	Shrubs	Fish ponds	Conflict areas	Total	%
PHASE I													
Maize	0	0	1685	0	0	0	1649	0	0	0	0	3333	8%
Sorghum	0	0	9815	0	0	0	0	0	0	0	0	9815	24%
Millet	0	0	3712	110	0	0	0	0	0	0	0	3822	9%
Rice	0	0	4	0	0	0	291	0	0	0	0	296	1%
Cotton	2320	0	2007	413	0	0	0	0	0	0	0	4740	12%
Sugarcane	14737	0	0	0	0	0	0	0	0	0	0	14737	36%
Vegetables	0	0	0	0	0	0	364	0	0	0	0	364	1%
vineys and other use	0	685	0	0	0	0	0	280	0	35	0	1000	2%

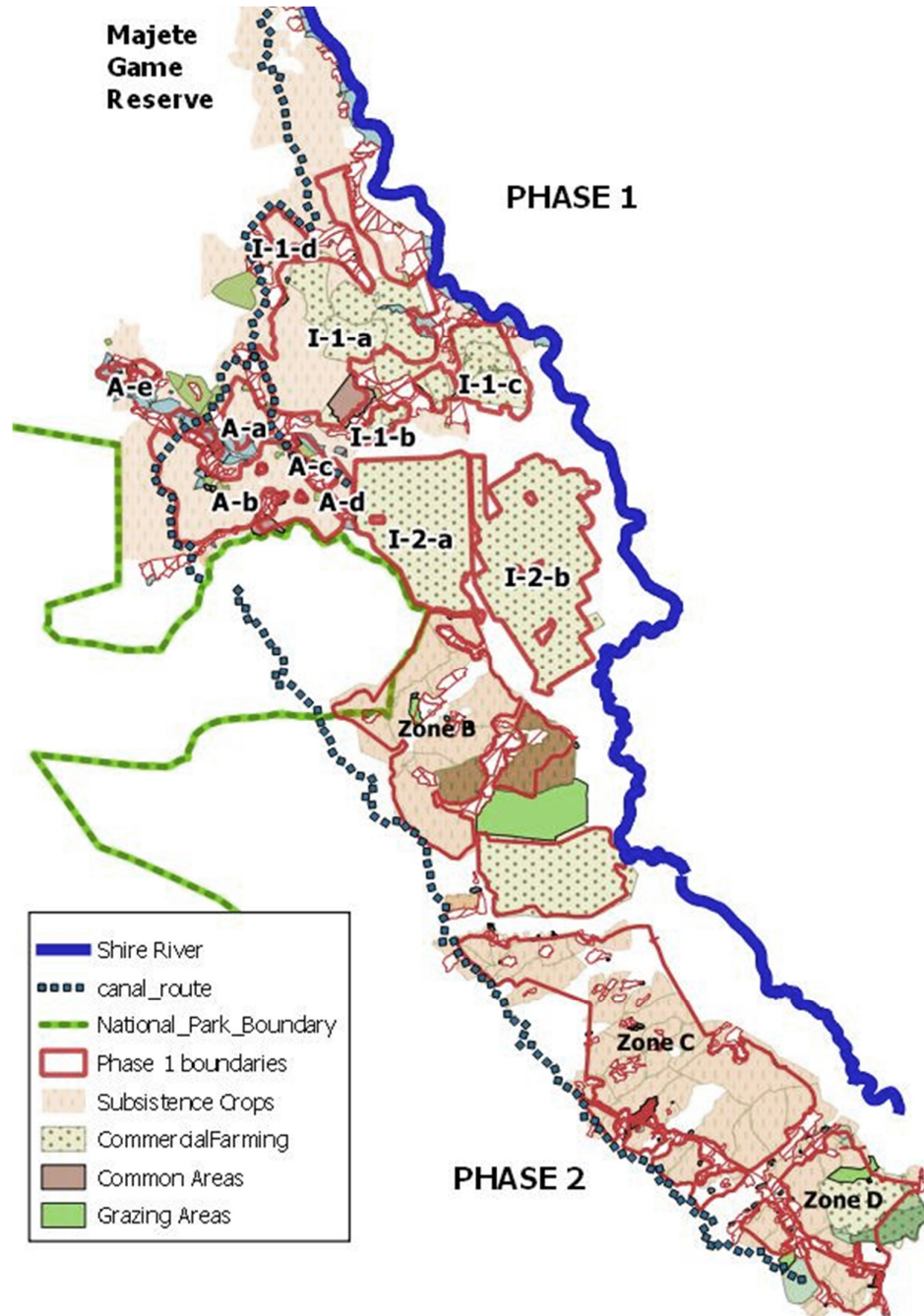
	Commercial farming	Settlement areas	Subsistence crops	Common areas	Forest Areas	Grazing areas	Wetlands	Grave yards	Shrubs	Fish ponds	Conflict areas	Total	%
Total uncultivated	0	0	18	47	1560	58	0	0	610	0	0	2293	6%
conflicts	0	0	0	0	0	0	0	0	0	0	659	659	2%
Total	17056	685	17242	570	1560	58	2304	280	610	35	659	41058	100%
%	42%	2%	42%	1%	4%	0%	6%	1%	1%	0%	2%		
PHASE II													
Maize	0	0	502	0	0	0	0	0	0	0	0	502	1%
Sorghum	0	0	11472	0	0	0	0	0	0	0	0	11472	30%
Millet	0	0	8387	519	0	0	0	0	0	0	0	8906	24%
Rice	0	0	0	1332	0	0	0	0	0	0	0	1332	4%
Cotton	0	0	261	0	0	0	0	0	0	0	0	261	1%
Sugarcane	5906	0	0	0	0	0	0	0	0	0	0	5906	16%

	Commercial farming	Settlement areas	Subsistence crops	Common areas	Forest Areas	Grazing areas	Wetlands	Grave yards	Shrubs	Fish ponds	Conflict areas	Total	%
Vegetables	0	0	0	0	0	0	8	0	0	0	0	8	0%
and other use	0	4430	0	0	0	0	0	256	0	4	0	4690	12%
uncultivated	0	0	938	0	1748	1929	0	0	20	0	0	4634	12%
conflicts	0	0	0	0	0	0	0	0	0	0	176	176	0%
Total	5906	4430	21559	1850	1748	1929	8	256	20	4	176	37886	100%
%	16%	12%	57%	5%	5%	5%	0%	1%	0%	0%	0%		
TOTAL SVIP													
Total SVIP	22963	5115	38801	2420	3308	1986	2312	536	630	39	835	78945	
%	29%	6%	49%	3%	4%	3%	3%	1%	1%	0%	1%		

The total areas covered are 41,058 has in phase 1 and 37,886 has in phase 2. This is almost double as much as the hectares indicated as project areas in the TOR. The reason is that at the time of the field registration the canal route and potential irrigation areas were not yet defined by the TFS and the field study had to be completed before the onset of the rainy season. Therefore, it was decided to cover all Villages or Group Villages located partly or completely within the project area

defined by the TOR to ensure that all areas of the SVIP will be covered. When the project boundaries later were changed to include some more areas that could be irrigated by gravity to the west and the north, these areas also had to be included in the second round of field studies. The total land use coverage can be seen in the Figure 5 below.

Figure 5 Registration of total Land Use in SVIP areas



The second round of field studies also included a registration of the households and populations within each of the GVs in phase 1. This was done to obtain a more precise estimate of the number of people

and households within the communities that would be directly affected by the irrigation project, and also to give a better basis for an estimate of how many people each of the projected irrigation blocks could contain. Based on these registrations it is estimated that around 21,000 households and a population of 95,000 persons are residing within or close to the phase 1 of the project.

Table 3 above presents the land use for all the GVs, which can be affected by the SVIP. It is however necessary to carry out the same land use distribution for the actual project boundaries defining SVIP phase 1 to be able to identify the amount of irrigable land and what it contains.

The latest project boundaries from TFS (as were shown in Figure 3) has been received the 22nd of October 2016, and give a total of 26,014 hectares for phase 1 including the area A-e in Mwanza Valley. The details of the land use can be seen in **Table 4** below.

Table 4 Areas per zone in Phase 1 with existing irrigation schemes

Zone	Area (has)	Total area per zone	Existing Irrigation	New irrigated land	Comments
A-a	596				
A-b	3936				
A-c	183				
A-d	233				
A-e	239		29		Wimwi scheme
ZONE A		5188		5159	
I-1-a	6757		1780		Kasinthula
I-1-b	353				
I-1-c	1680		1680		Phata & Sande
I-1-d	386				
I-1-e	388				
ZONE I-1		9564		6104	
I-2-a	4686		4686		Ilovo
I-2-b	6578		6578		Ilovo
ZONE I-2		11263		0	
TOTAL Phase 1		26014	14752	11262	

Of the 26,014 hectares in Phase 1, 14,752 hectares are already covered by existing irrigation schemes, so 11,262 hectares are

remaining as new irrigable areas. TFS are estimating that only 85% of the total areas within each zone will be actual irrigation areas, as roads and small rivers, graveyards, hills and other similar areas will reduce the total area. To be able to compare the land use registrations with the project areas, the full area figures are used here.

Commercial agriculture in the Shire Valley is clearly dominated by sugarcane production in over 50% of the phase 1 area, as also can be seen in *Figure 6* below. This is primarily the Illovo estate, who occupies around 12,000 has including Sande Ranch in zone I-1-c. There are also two outgrowers' cooperatives growing sugarcane – Kasinthula with 1,780 has and Phata of around 800 hectares, including their second phase which is in the process of being implemented. In addition, another cooperative is being established, named KAMA, which is going to produce sugarcane on a 2,000 has area adjacent to the Kasinthula scheme in their first phase and intends to expand to 6,000 has in the future. KAMA has entered into a business agreement with the ethanol company PressCane. The outgrowers' organisations will be described in more in details in the following chapter 4.

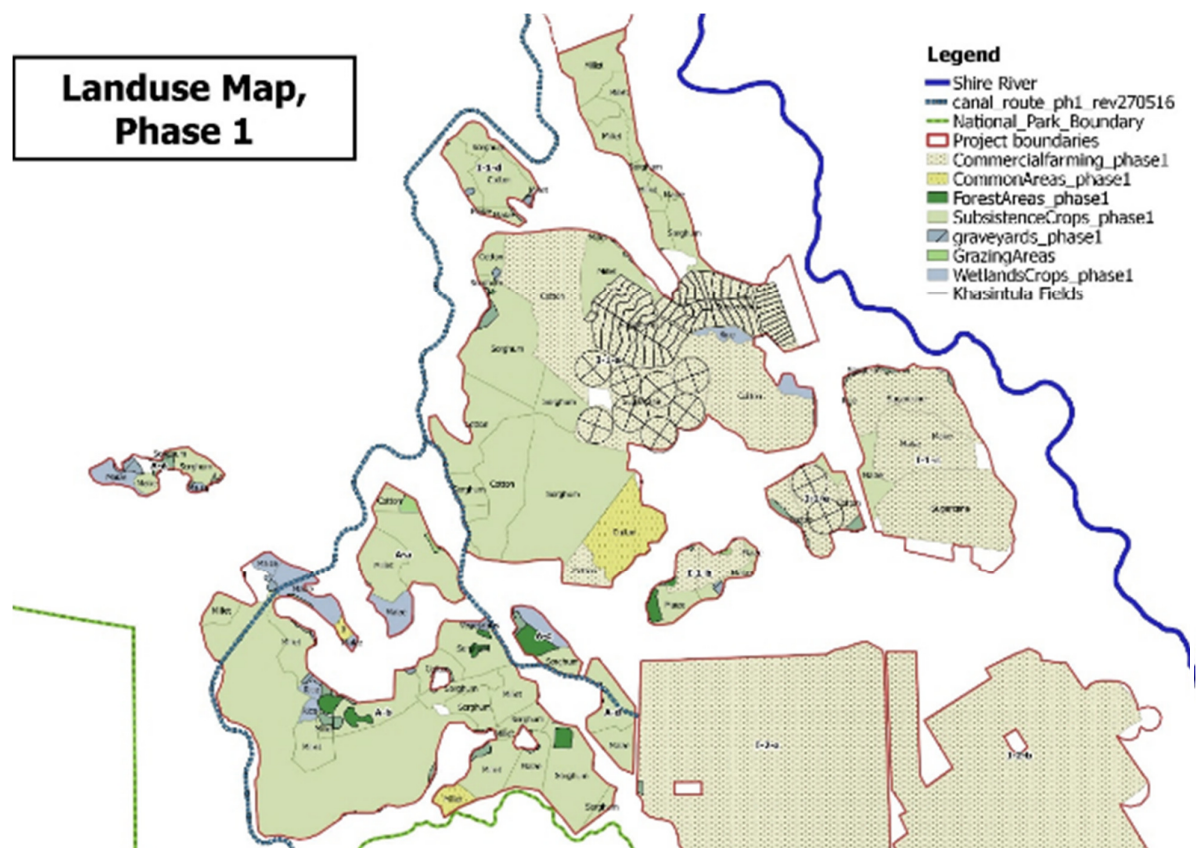


Figure 6 Land Use Map. Phase 1

The same map with a higher resolution can be found in Appendix A, where also a map of the land use for phase 2 can be found.

The various land use types shown in the phase 1 map is also presented in Table 5 below. For phase 2, the land use shown in table 3 earlier in this chapter can be considered representative for the area, as the field investigations generally corresponds with the project boundaries.

Table 5 Land use in the Phase 1 in hectares

Phase 1	Commercial farming	Settlement areas	Subsistence crops	Common areas	Forest Areas	Grazing areas	Wet lands	Grave yards	Shrubs	Fish ponds	Total	%	Total New land
Maize	0	0	391	0	0	0	331	0	0	0	722	3%	722
Sorghum	0	0	4787	0	0	0	0	0	0	0	4787	18%	4787
Millet	0	0	1603	57	0	0	0	0	0	0	1660	6%	1660
Rice	0	0	2	0	0	0	118	0	0	0	120	0%	120
Cotton	1698	0	1024	320	0	0	0	0	0	0	3042	12%	3042
Sugarcane	14390	0	0	0	0	0	0	0	0	0	14390	55%	
Vegetables	0	0	0	0	0	0	70	0	0	0	70	0%	70
Villages & other use	0	255	0	0	0	0	0	73	0	34	361	1%	
Rural uncultivated	0	0	0	92	188	30	200	0	350	0	860	3%	860
Total	16088	255	7807	469	188	30	720	73	350	34	26014	100%	11262
%	62%	1%	30%	2%	1%	0%	3%	0%	1%	0%			

As seen from Table 5, 55% of the phase 1 area is used for sugarcane. For the remaining crop areas, the dominant farming system is a mix between predominantly maize and sorghum. The field registrations have identified the main crop within each land area, but often the crops are mixed, so maize and sorghum and/or pearl millet are grown in the same areas. The figures in the Table 5 above have to be combined with the information from the household questionnaires, where maize accounts for approximately 24% of agricultural land use and other crops including pearl millet accounts for 31%. The figures correspond better for sorghum (18%) and cotton (17%), while beans and rice only accounts for 3 and 4% of the area in the household survey.

The dominant farming system within the customary land is rain-fed subsistence farming system, where each farmer grows a mixed crop on 2-3 parcels. The results from the Socio-Economic Baseline report also shows that commercial farming in customary land outside the outgrowers' schemes is very rare. Where the communities are located

close to a river, the "dambos" are used for cultivation as well. These are temporary wet-land areas, which will be flooded during the heavy rain periods and have a fertile soil. These areas are oftenseen as common community areas to be used by the poor and landless people. In other cases they are used for vegetable or rice production.

Livestock are mainly kept by farmers on post-harvest crop residue fields and small open-access grazing areas; only a few communal free grazing area were identified in the inventory.

3.7 Land Tenure

No public lands, including government lands, were found within SVIP except the Majete Game Reserve at the first 1 km of the canal and the Lengwe National Park, where the Bangula Canal will pass for a 14 km long stretch in Phase 2.

3.7.1 PRIVATE LEASEHOLDS

Private leaseholds in Chikwawa are presented to the Regional Commissioner in Blantyre with a survey sketch, which will be annotated on 1:50.000 topographic at the Lands Office. The date and the name of the applicant is also registered by hand in a ledger. The only way to identify any leases within a certain area is therefore to identify the lease application numbers on the topographic maps, and digitize them to see if they fall within the project area. Lease numbers can then be controlled in the files in the Lands Office and in the cases where a title has been granted, the deed document can be verified in the Deeds Registry in Lilongwe.

Figure 7 shows the overview of the private leases, which have been identified as being potentially affected by the SVIP project.

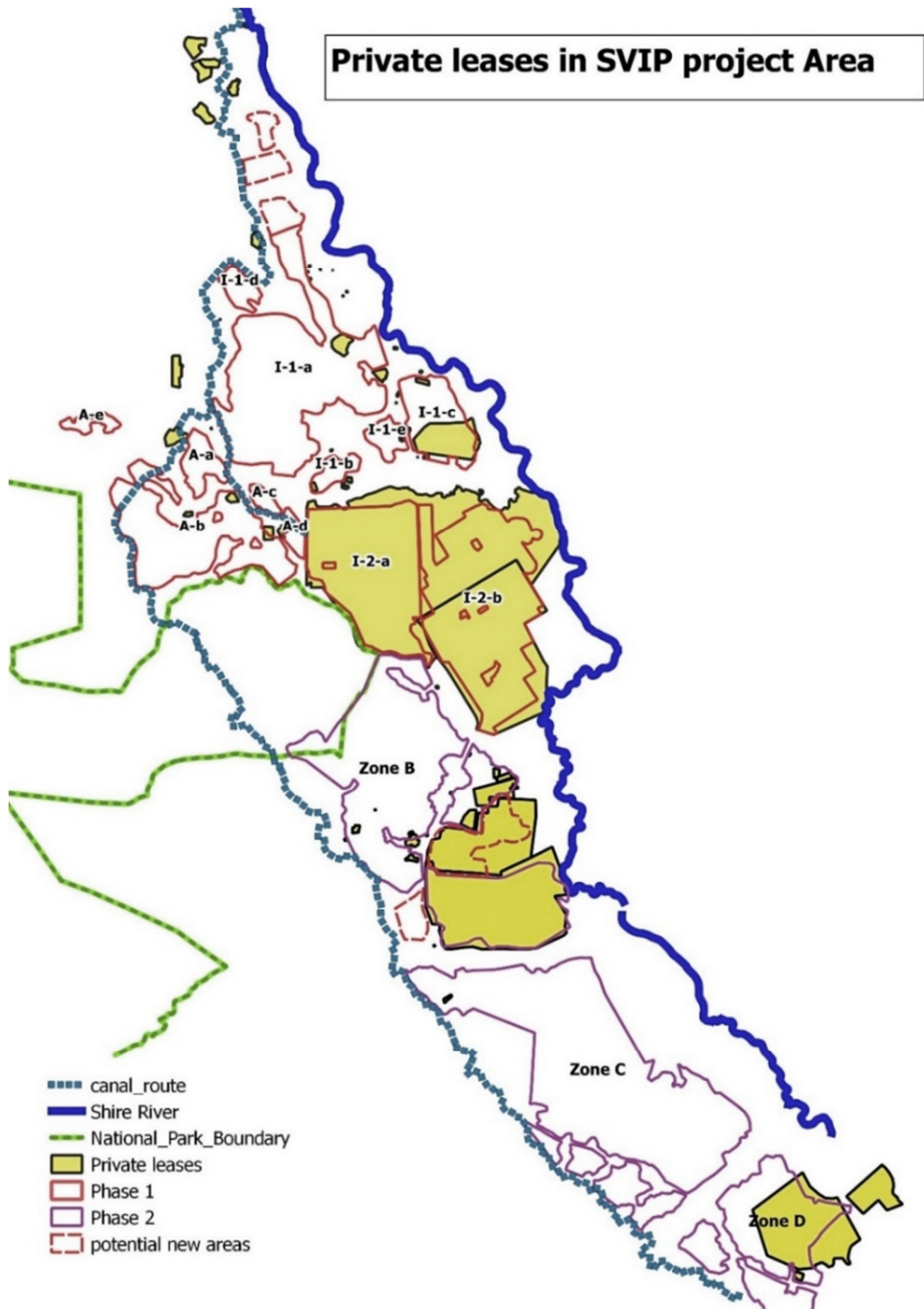


Figure 7 Private Leaseholds

It is clear from the map that almost half of phase 1 of the SVIP project area is private owned land held by leasehold titles, mainly due to the existence of the large Illovo sugar estate, as also can be seen in the figure above. (Illovo is registered as SUCOMA SUGAR ESTATE in the tables). For phase 2 the private owned properties are only 21% of the total area, the main private properties here is Alumenda (owned by Illovo), Kaombe Ranch, a S.V. Cattle Ranch and Crown Plantation, see Table 6.

Table 6 Private leasehold percentage in SVIP

	Total Area (Ha)	Private leaseholds (Ha)	Part of leases within SVIP (Ha)	%
Phase 1	26,014	16,840	12,092	46%
Phase 2	24,750	8,506	5,298	21%
Total	50,764	25,346	17,390	34%

In total 34% of the SVIP area is private owned as compared to only 11% as an average for the district. In phase 1 46% of the SVIP area is private owned.

A detailed overview of the identified leases in Phase 1 can be seen in Table 7 below.

Year	Number	Leaseholder	area (has)	Deed no.	within SVIP	area (has)
	4564	SUCOMA Sugar Estate	4833	31244	I-2-b	11263
	5912	SUCOMA Sugar Estate	10587	44494	I-2-a	
	36660		1	36660	no	
	39000		2	39000	no	
	42453		13	42453	A-d (partly)	1
1974	44327	ADMARC	2	44327	no	
	45199	Dept. of Agriculture	2	45199	no	
1988	50570	Cattle Feed Lot Co l	688	50570	I-1-c	632
1987	74	F.L.K	13	57575	I-1-b	13
	344	S.Marshall	6	69258	no	
1992	8	A.M. Dassu	104	71392	no	
2003	8	M.M. Isyagi	4	79749	no	
2005	15	Peter Marko Kusakala	1	81266	no	
2006	14	Yohane Ntayananja	42	81434	A-b (partly)	18
2006	23	G.F. Manjolo	0	82488	no	
2001	6	O. Kwanjo	12	82857	no	
2001	7	O. Kwanjo	11	83438	no	
2003	1	Chinkane	0	85130	no	
1992	1	H.P. Thomas	27		a-b	27
1996	51	Machera	1		no	
1996	53	Banda	0		no	
1997	105	Kasinthula Ranch	97		I-1-a	97
1997	123	C. I. Chipoya	13		no	
1998	144	C.I. Chipoya	5		I-1-c (partly)	4
1998	162	R.E. Chalumbira	11		no	
1999	226	D.J. Jamu	40		no	
1999	195	J.A. Chimwaza	22		I-1-c	22
1999	208	L.R. Thomson	70		no	
2000	10	Jehovas Witness	0		no	
2001	43	kulinngamanda	12		no	
2002	14	Jehovas Witness	0		no	
2003	10	Nelson Chigamba	0		no	
2004	22	Mwabica	0		no	
2005	6	Jehovas Witness	1		no	
2009	22	David Jabulani Moyo	13		1-1-e	13
2011	18	J. Chiama	5		I-1-c (partly)	2
2014	48	Daud O. Ngumo	2		no	
2015	47	Chamial	0		no	
2016	11	George Mankhwala	70		no	
2016	12	E.W. Banda	41		no	
		A. Golege	87		no	
			16840		numbers	areas

Total private leaseholds within SVIP					4	11992
Private leaseholds not verified					8	100
Total Phase 1					12	12092

Table 7 Private leases identified in Phase 1

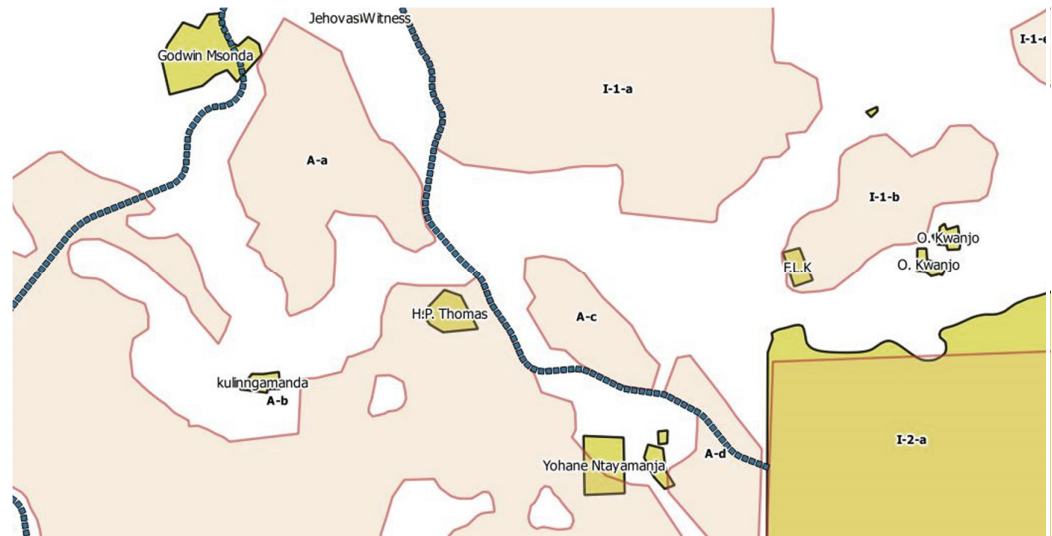
The list shows 41 lease applications potentially being affected by SVIP in the Phase 1 area based on the information from the Lands Office. After the digitalization of the survey sketches and comparing those with the latest revision of the project boundaries there are only 12 of the 41 leases which are located wholly or partly within the project boundaries. However, the registries are often incomplete and it is difficult to locate the actual lease files in the system. The reason may be that some of these applications still not have materialized in actual leases, and others may be void. Recently all the lease files have been scanned, but unfortunately the digital system is not yet so developed, so even after several requests the MoLHUD has not been able to verify the whole list of lease numbers.

A number of the leases are now registered with a deed in the Deeds Registry, and are most likely still valid, but only 4 of the leases have been verified (marked in green at the list) while the remaining 8 still need a feedback from the MoLHUD before it can be decided if they shall be taking into account in the project.

The lack of verification of the leases in the area also has been a problem during the field investigations for the main canal. Several persons have claimed that they have obtained a lease for their properties, but it has not been possible to identify their names in the Lands Office's registry.

Figure 8 below shows a cut-out of the lease map, where it can be seen how some of the private leases (in yellow) are located within phase 1.

Figure 8 Some of the Private leasehold locations in Phase 1

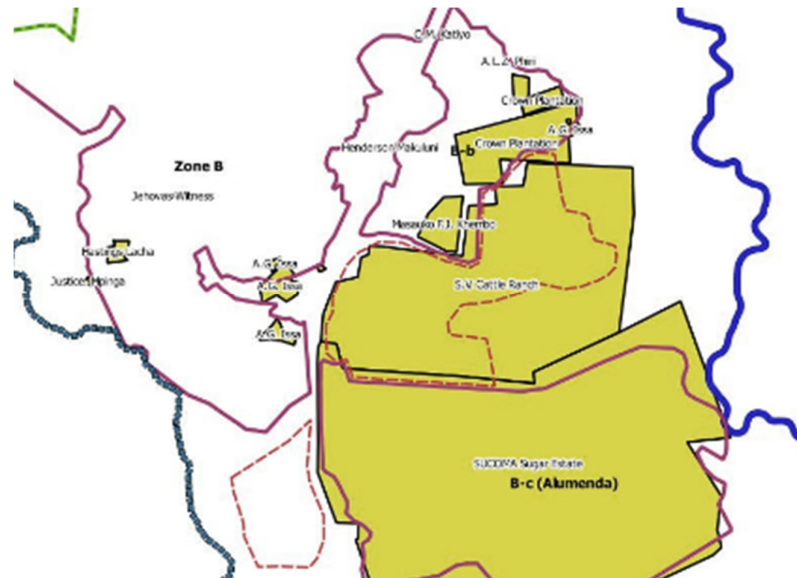


In phase 2 the majority of the leases are located in Zone B, where only the Kaombe (owned by PressCane) are located in Mbenje in Zone D. The private leaseholds located in phase 2, Zone B can be seen in Figure 9 below.

The irrigation schemes Alumenda owned by Illovo (Sucomo Sugar Estate) in Zone B-c and Crown Plantation with two leaseholds in area B-b cover a total area of more than 3,500 hectares within the project boundaries. Another large private leasehold held by S.V. Cattle Ranch covers the whole of the new area north of Alumenda,

This area held by S.V. Cattle Ranch is not part of the original irrigation zones for phase 2, and has only at a later stage been identified as a potential irrigation area (dotted line in the figure below). Therefore the area is not included in the list of affected hectares in the corresponding Table 8 showing leaseholds affected by phase 2.

Figure 9: Private Leaseholds in Phase 2 (Zone B)



Private leaseholds are shown in bright yellow colour. Apart from the aforementioned, a number of smaller private leaseholds are wholly or partly affected by the phase 2 of SVIP. Most are located within the irrigation zone B-a or B-b as can be seen in Table 8 below.

Table 8 Private Leaseholds affected by Phase 2

Year	Appl. no.	Leaseholder	area (has)	Deed no.	Within SVIP zone	area (has)
		Press Ranching	2265	53819	D-a (partly)	1582
		A.G. Issa	19	72424	B-a	19
		SUCOMA Sugar Estate	3781	76041	B-c (partly)	3273
2000	30	Jehovas Witness	0	80906	B-a	0
	361	S.V. Cattle Ranch	1974		New potential area	
2001	4	A.G. Issa	9		B-b	4
2001	2	A.G. Issa	16		B-b	16
2007	2	C.M. Katiyo	3		B-b	3
2009	26	Masauko F.J. Khembo	71		B-b	71
2011	32	Crown Plantation	28		B-b	28
2011	33	Crown Plantation	248		B-b (partly)	217
2014	11	Cotton Ginnery	11		C-a	11
2016	49	A.L.Z. Phiri	0		B-b	0
2016	35	Hastings Lacha	18		B-a	18
	358	A.G. Issa	40		B-a (partly)	30
		A.G. Issa	4		B-a	4
	24	E. Chakuamba	21		D-a	21
Total private leasehold area			8509			5298
Number private leases affected by Phase 2						16

3.7.2 CUSTOMARY TENURE

Customary tenure is the predominant landholding system in the SVIP in 66% of the project land area. In customary areas, land is held by families usually by a male member (81%), sometimes by a female member (15%), and less frequently both men and women (usually as spouses) are joint rights-holders to their land (4%). Of the male land owners, 35% is under the age of 35 and of the female owners 29%²³.

Almost all landholders have acquired their land by inheritance directly from either their father or mother²⁴. Almost all land has been allocated. Land scarcity means that access to land through allocation by a family head or traditional authority (chief, group village head or village head) is now uncommon.

Tenure is generally perceived as secure, probably due to the centrality of inheritance law in the customary landholding system. Traditional authorities have no direct role or influence on how land is assigned to family heirs. Land transfers or sales to non-family members or to persons from outside the community or village are prohibited, although land rentals are less restricted. Only when land is abandoned does a traditional authority or family head once again have a direct role in (re)allocating rights to that land.

The inventory, questionnaire survey and informant interviews did not reveal any cases of informal landholding, either over private, public or customary land. In all cases people were found occupying and using land within the law – statutory or customary – or with the consent of a recognised authority – official, traditional or family.

²³ Results from the SVIP household interviews.

²⁴ National Census of Agriculture and Livestock 2006/2007. NSO, April 2010

3.8 Land Issues and Disputes

Questionnaire and informant interviews reveal that the main issues or challenges facing customary landholders are²⁵:

- > Rainfall (too little or too much).
- > Livestock theft.
- > Land disputes.

In the household interviews 16% of respondents reported an ongoing land dispute. These can be broken down into disputes with neighbours about overlapping rights, access or boundaries (45%), intra-family about inheritance (21%), with Village Head (25%) and with others about various issues (9%). Disputes outside the family are always taken to the traditional authority for resolution – first to the village head then the group village head and chief if necessary. Family disputes are either resolved internally (58%) or with the help of the traditional authority (33%), or by other means (8%). In case of a dispute with the Village Head the next higher level in the Traditional system will be contacted to solve the dispute. Conflict of a wider, more serious character were not revealed by the field surveys or interviews. The same proportion of conflicts over land were found in the NACAL study done by NSO.

Looking at the results from the detailed land registration of 361 hectares in the main canal line in Chapter 5, it doesn't give the same picture. Out of 696 parcels identified in the canal line, only 1 conflict was identified, which concerned a larger parcel that a person had bought from the T/A and where 4 other people claimed that they have acquired each their part of the parcel by inheritance. The conflict was settled in the magistrate court in Chikwawa, but afterwards appealed to High Court by one of the 4 claimants.

This is not a typical case and the general perception is that disputes and conflicts are relatively easy solved by the traditional authorities.

3.9 Land Markets

A lack of land for allocations inevitably means that persons without land must find alternative means of acquisition or access of land or find an alternative source of livelihood. The SVIP household questionnaires results show that only 0.5% of landholders had rented out land to others, a figure which also were sustained by the results from the detailed land registration in the Main Canal line. These persons may not be from the same family lineage or even from the same village. Renting out, which may or may not require traditional

²⁵ Data within this section are the results of the SVIP household interviews.

authority consent, provides cash income for landholders who have excess land or are unable to cultivate the whole holding without employing casual labour. A recent study on Malawi land tenure revealed that active land rental markets are emerging in central and southern Malawi in response to increasing land scarcity, the skewed distribution of land, and imperfections in non-land factor markets. Although total landlessness is still at a very low level (3%) in Malawi, many near landless households attempt to access extra land through the land rental market where fixed-rent short-term (usually one year) contracts appear to dominate.²⁶

Anecdotal accounts emerge from focus group discussions that land can be acquired or 'bought' from traditional authorities (chiefs). The CCPLTRPF landholder questionnaire survey did not reveal any instances of customary land sales but NSO statistics show that 6% of farmers have purchased the land²⁷.

3.10 Landholder Demographics

As expected, the majority of customary landholders in the SVIP area are male (81%). The CCPLTRPF survey finds that 15% of landholders are female, and 4% hold the land jointly as spouses. Focus group responses suggest that custom dictates that men make decisions about land because they are the household head. Focus group responses also suggest that youth are more receptive to the proposition that land could be held jointly and equally by male and female spouses.

With inheritance now the primary way to acquire or access land it is unsurprising that most landholders are over the age of 35 years. Land scarcity means opportunities for youth to acquire their own land are limited, although rental is an emerging option.

There is a high incidence of poverty within the SVIP. The NSO's Integrated Household Survey of 2010/11 finds that within the Chikwawa and Nsanje Districts over 80% of the population is poor and over 55% ultra-poor. Anecdotal evidence from focus group discussions reveal instances where poor farmers have sold land or are forced to rent out land because they lack resources (labour or capital for fertilizer for example).

3.11 Land registration in the Canal Route in Phase 1

A detailed diagnostic study of the area required for the main canal and main branch canals in phase 1 was carried out to enable estimating

²⁶ Holden *et al*, 2006. Land policy reform: The role of land markets and women's land rights in Malawi

²⁷ National Census of Agriculture and Livestock 2006/2007. NSO, April 2010

the magnitude of resettlement and compensation. It was a registration of the present situation, not a precise demarcation of the boundaries of the affected parcels and the canal width. With the registration it is possible to get an overview of the number of parcels that might be affected, and the land uses including the type of crops grown, so it can be estimated how much compensation should be expected for both land required permanently and temporarily for construction purposes.

A total of 621 parcels belonging to 570 Project Affected People (PAPs) and 127 buildings were identified within the main canal route and its main branches in phase 1. Table 9 below, presents an overview of the type of areas affected by the total main canal route of 63 km in phase 1. These figures are based on the detailed registrations in the field.

Crop area only accounts for 35,2% of the affected areas, whereas grazing areas and areas not in use accounts for almost half of the total area. These figures do not signify that the areas can be considered as "idle", they are basically all allocated to individuals within the communities and are just not being cultivated for various reasons (dry season, lack of resources etc.).

Table 9 Land use in the Main Canal Area

Land use in Main canal Area

	no Parcels	No PAPs (rural)	No PAPs (in settlements)	hectares	%
Crop	332	310		132,5	35,2%
Forest	36	31		24,29	6,5%
Grazing	34	32		43,91	11,7%
Settlement Area	0	0	127	35,22	9,4%
Game Reserve	2	0		14,95	4,0%
Not used	214	197		122,66	32,6%
Graveyard	3	0		2,71	0,7%
Total	621	570		376,24	100,0%

Table 10 below shows what type of crops has been registered for the 332 crop parcels. It also shows that 90% of all affected land is held by individual (group of) person(s) (customary or private lease) and only 5% is managed by the community. The latter are mostly in the northernmost part of the area close to Majete, where land development is not very high.

Table 10 Crop Type and Land Tenure in Main Canal

Crop type			
	no parcels	hectares	%
Maize	34	16,66	12,6%
Sorghum	213	84,76	64,0%
Cotton	68	28,01	21,1%
Vegetables	1	0,26	0,2%
Rice	12	2,21	1,7%
Pigeon Peas	2	0,22	0,2%
Sweet Potato	2	0,41	0,3%
Total	332	132,53	100%

Land tenure (rural)			
	no parcels	hectares	%
Customary owned	597	290,3	85,8%
Community Owned	19	16,44	4,9%
Private lease	3	16,62	4,9%
Game Reserve	2	14,95	4,4%
Total	621	338,31	100,0%

3.12 Summary

Findings of the SVIP data are summarised in Table 11 together with a similar indicator statistics from NSO.

The SVIP data are summarised from the land use and tenure survey for the total area shown in Table 3 and from the data from the Socio-economic baseline report covering both phase 1 and 2 of SVIP. The NSO data is from the SVIP affected TAs in the district of Chikwawa and Nsanje where available or from the southern region reported by the National Statistical Office's (NSO) National Census of Agriculture and Livestock 2006/7 and/or the Integrated Household Survey 2010/11.

Table 11: Land Use and Tenure Summary

		SVIP	NSO
Tenure	Private land	34%	11%
	Public land	0%	2%
	Customary land	66%	88%
Holdings & parcels	Holding size (Ha) on average	1.99	0.787
	Number farm parcels held on average	3.4	1.5
	Parcel size (Ha) on average	0.58	0.297
	Distance away (m) on average	2,2	2,4
Rentals	Farmers who rent land out	0.5%	8%
Person(s) who holds land right	Male solely	81%	
	Female solely	15%	
	Male and female jointly	4%	
	Male rights-holder age <35	35%	
	Female rights-holder age <35	29%	
Disputes	Land with any type of dispute	16%	17%
	Family or inheritance dispute	21%	34%
	Neighbours or boundary dispute	45%	
	With traditional authorities	25%	6%
	Other disputes	9%	
Land Use	Commercial/ sugar cane	29%	
	Pastoral/ grazing	3%	
	Crops/ subsistence farming	49%	
	Common areas	3%	
	Settlement Areas	6%	
	Wetlands (dambos)	3%	
	Graveyards	1%	
	Forests/shrubs	5%	
	Fish ponds	0%	
	Conflict Areas	1%	

4 Land Allocation and Consolidation Strategy

4.1 Introduction

The current landholding patterns in the SVIP reveals that, on average, each farmer has 3 to 4 separate parcels of 0,58 Hectares in size and a total holding of 1,99 Ha. Typically, each of these parcels has different agricultural characteristics such as soils, drainage and fertility. In some villages, one parcel may be located next to the Shire River and liable to regular flooding. The fragmentation of holdings and separation of parcels is usually a result of original traditional authority allocations to distribute fertile and less fertile land equally among community members. This strategy also promotes agricultural diversification and so mitigates against the livelihood risk of single crop failures. Farm fragmentation, however, is often viewed as a constraint to improved agricultural productivity because of the spatial distribution of fields and distances in between, which is also an impediment to mechanisation and intensification of use.

4.2 Agricultural Policies and Strategies

Prior to current policies and strategies for agriculture, Malawi pursued agricultural development through expansion of the estate sector (farming leasehold land) for export of tobacco, tea and sugar. The estate sub-sector grew at an average of 17 percent per annum over the period 1964-1977, while the smallholder sub-sector, focused on food production, especially maize, grew at an average rate of 3 percent per annum.²⁸ A bias toward the estate sector resulted in customary land being annexed from smallholders.

The earlier emphasis on estates waned and the current Malawi's Growth and Development Strategy (MGDS) 2011-2016 emphasis agriculture with food security as the foremost of nine key priority areas. The focus for agriculture is to increase productivity and diversification while moving away from a dependence on rain-fed cultivation.²⁹

Land is a sub-theme in the MGDS, which highlights the re-allocation of land to poor households largely through the Community Based Rural Land Development Project (CBRLDP), among other initiatives. The major challenge is increased demand for land, as it becomes scarcer. Other challenges include low institutional capacity, poor land practices, and insufficient public awareness on land laws.

²⁸ ASWAp p15

²⁹ MGDS II p74

Table 12 below shows the goals, expected outcomes and key strategies for agriculture, food security and land in the MGDS.

Table 12: MGDS Agriculture and food security

Agriculture	Food security	Land
The goal is to increase agriculture productivity and diversification	The goal is to ensure sustained availability and accessibility of food to all Malawians at all times at affordable prices	The goal is to ensure equitable access to land and tenure security; efficient management and administration system; and ecologically balanced use of land and land-based resources
<p>The medium-term expected outcomes include:</p> <ul style="list-style-type: none"> > Increased smallholder farmers output per unit area; > Increased agricultural diversification; > Increased production of high value agricultural commodities including cotton, wheat and macadamia nuts for exports; > Improved agricultural research, technology generation and dissemination; > Increased livestock and fish production; > Reduced land degradation 	<p>The medium term expected outcomes include:</p> <ul style="list-style-type: none"> > Food self-sufficiency at household and national levels; > Increased and sustained food availability and accessibility; > Enhanced agricultural risk management 	<p>Medium term expected outcomes:</p> <ul style="list-style-type: none"> > Improved equitable access to land and tenure security; > Improved land planning, ecologically balanced land use and management; and > Improved provision of geospatial information.
<p>Key strategies include:</p> <ul style="list-style-type: none"> > Providing effective extension services; > Strengthening linkages of 	<p>Key strategies include:</p> <ul style="list-style-type: none"> > Improving the functioning of agricultural markets; > Ensuring an effective 	<p>Key strategies include:</p> <ul style="list-style-type: none"> > Promoting land ownership and title registration;

<ul style="list-style-type: none"> farmers to input and output markets; > Enhancing livestock and fisheries productivity; > Promoting appropriate technology development, transfer and absorption; > Improving access to inputs; > Promoting contract farming arrangements; > Promoting irrigation farming; > Promoting production of non-traditional crops; > Improving agricultural production for both domestic and export markets; > Strengthening farmer institutions; > Promoting soil and water conservation techniques. 	<ul style="list-style-type: none"> early warning system; > Promoting income generating activities; > Increasing national food storage capacity; > Promoting dietary diversification > Improving agricultural market systems; > Improving coordination and management of food aid and imports; > Implementing policies to reduce dependency on food aid > Strengthening and scaling-up market based risk management initiatives; > Reducing post-harvest losses; > Strengthen PPPs in agriculture > Providing technical and regulatory services; 	<ul style="list-style-type: none"> > Providing physical development planning standards, management guidelines and legal framework; > Decentralizing land administration and management functions; > Developing a geospatial database and establishing a national Spatial Data Centre; > Preparing a National Spatial Framework for Strategic Physical Development Planning and Management; > Raising public awareness on land related laws, policies, and procedures; and > Developing mechanism for widespread dissemination of geographic information and digital mapping services
--	--	--

The National Agricultural Policy (NAP) 2010-2016 highlights the importance of agriculture to the economy of Malawi, identifying that smallholders contribute 70% and the estate sector only 30%, but that with smallholder comprising 90% of agricultural land, productivity is lower. The policy attributes this to small and fragmented holdings with yields lower than the estate sector. Policy actions to achieve the agricultural policy objective in land resource management include, among other things:

- > To balance land requirements for different land uses according to land suitability and capability, while regulating competing land demands for different sectors such as biofuels development;

- > Designate, through a consultative process, with land users, the best use of land for optimal socio-economic development;
- > Strengthen coordination amongst stakeholders involved in land resource management issues and build the capacity of coordinating institutions such as the Department of Lands.

Implementation of the MGDS and NAP incorporated a sector wide approach to agricultural development. The Malawi Agricultural Sector Wide Approach (ASWAp) identified small land holding sizes and

Box 4: Malawi Agricultural Sector Wide Approach (p25)

The methods of cultivation on these small land holdings among smallholder farmers remain traditional and non-mechanised. Several studies in Malawi have shown a positive relationship between technology adoption (e.g. fertilizer use) and land sizes among smallholder farmers. There have been several government efforts promoting the adoption of fertilizers, hybrid varieties and modern methods of farming and the provision of price incentives through progressive market reforms. However, due to partly diminishing land holdings the supply response has remained weak. At current market prices for inputs and outputs, adoption of higher productivity technologies is simply impossible for the poor given their low purchasing power.

fragmentation among the key constraints to agriculture.

One of the three focus areas of the ASWAp is land and water management, which is also a pillar in the Comprehensive African Agricultural Development Programme, an initiative under the New Partnership for Africa's Development (NEPAD) to which Malawi is a member. "The overall thrust of the ASWAp is the widespread introduction of profitable farming options to the poor [based on the] evidence...that, as farmers rise out of poverty, so they diversify."³⁰ None of the key actions in the ASWAp mention consolidating of landholding because this is expected to be a natural result of the adoption of new cultivation and production systems. However, as a cross cutting issue, there is an action to develop and implement awareness and advocacy programmes against agricultural property grabbing including land.³¹

Between 2004 and 2011 the Government implemented the Community Based Rural Land Development Project (CBRLDP) with the support of the World Bank sought to start addressing emerging social conflicts related to unequal access to land by piloting a government assisted, community-driven land transfer programme to benefit 15,000 poor

³⁰ ASWAp p13

³¹ *Ibid* p48

small-scale farmers.³²In addition, with complementary programme measures it were expected to increase and sustain agricultural production by these farmers on their new, consolidated, landholdings. Project design built on lessons from past Government experience with the redistribution of land bought from private estates, and the need to develop a more peaceful and sustainable land redistribution process that is transparent, voluntary, legal, and resource-supported. The World Bank considered project implementation to be satisfactory but the following issues affected project achievements:

- > Inconsistent land policy decisions, such as non-implementation of new and revised laws and regulations.
- > Availability of land: Poor land policy decisions led to reduced land availability and increased land prices for the Project.
- > Weak capacities of the land administration services: The Project provided training and equipment but capacity insurveying and registration are still low and remain a critical constraint to landreform and potential scaling-up.
- > Monitoring and Evaluation (M&E) deficiencies.

The project results report highlights some social issues that any future

Box 5: CBRLDP social issues (p11)

There were no major negative social impacts and conflicts as a result of relocations to newly acquired farms. The settlement approach involved purchase of farms from willing sellers and voluntary settlement of beneficiaries. All the land acquired by the beneficiaries was bought from voluntary sellers. Former estate workers had not been forced to leave the acquired farms and, in cases where they had expressed a desire to join the Project, they were subjected to eligibility criteria and allowed to join the Project. In some cases, estate owners gave away part of the estate to surrounding communities before selling.

A few disputes between beneficiary groups and surrounding communities erupted over boundaries. Some surrounding communities did not initially recognize estate boundaries. The absence of beacons to mark estate boundaries exacerbated the problem as local communities took advantage of the situation. There were also disputes between the beneficiary groups and estate owners whereby some estate owners came back to claim part of the land or some trees on the already paid for land.

Activities were undertaken to mitigate emerging social issues such as disputes over farm boundaries and inequitable sharing of farm land, including demarcation of estates into 2 ha land parcels; reaffirmation of estate boundaries; replacement of beacons; training in conflict management; and development of guidelines for sharing vacated land.

land reform project should mitigate (see box 5).

³² World Bank 2012. Community Based Rural Land Development Project: Implementation Completion And Results Report

4.4 Experiences with Land Consolidation in Malawi

As mentioned earlier in 4.1, agricultural strategies during the 60s, 70s and 80s promoted acquiring and expropriating customary tenure land for conversion to public leasehold for the expansion of estates and export-led commercial agricultural growth. Then in the 90s and 00s, a greater emphasis on smallholder farming and food security emerged. The Community Based Rural Land Development Project (CBRLDP) is one example of land reform that acquired and subdivided large farms for distribution in 2.2 Hectares into consolidated landholdings sufficient for one family's subsistence and livelihood needs.

Other initiatives to consolidate landholdings into more productive farm units are not commonplace; this excludes instances where chiefs have allocated customary land to individuals or companies, sometimes without the agreement and to the detriment of the local community.³³ This customary land is then converted to public land and a leased issued, for example, for sugarcane production.

Given the limited amount of unused land available for allocation, the expansion of commercial agriculture in many areas has led to the creation of outgrowers' schemes. There are several of such schemes operating in the SVIP area, all established in collaboration with the local sugarcane companies Illovo and PressCane. Kasinthula Cane Growers Association and Phata Sugar Cooperative are the two biggest schemes. A third outgrowers scheme KAMA was established in 2015 and has made the first irrigation design and are now seeking funds to hopefully start operating in 2017.

4.4.1 KASINTHULA CANE GROWERS ASSOCIATION

Established in 1996 from a smallholder rice scheme on land leased from government, the scheme has expanded in four phases from its initial 309 hectares and 103 farmers to 1.340 hectares and 762 farmers today cultivating mainly sugarcane but also food crops such as rice and maize.

Originally, the land was held under customary tenure, but when the rice production started on the first 96 hectares, the tenure was converted to public land, using section 27(1) of the Land Act, and then leased as a whole by the government to the trustees of the scheme. Sugarcane production needed a larger area of land that required adding adjoining customary land in new leases using a similar legal procedure. The lessee (leaseholder) is now the cane growers association rather than the trustees of the scheme, although the lease for the remaining phases have still not been granted.

³³ Institute for Poverty, Land and Agrarian Studies, 2015. Land Governance In Malawi: Lessons From Large-Scale Acquisitions

The conversion to sugar cane cultivation subsumed most of the existing rice farmers and landholders in the adjoined customary lands. A small number who opposed the conversion lost their rice parcels for which they reportedly did not receive compensation "because the land was public and not theirs" but retained other fields elsewhere in the village. Each farmer in the scheme was allocated 3 hectares – half for sugarcane and half for food crops – in a single demarcated parcel. The third phase of expansion into adjoining customary lands reduced the allocations to 2 hectares "due to the high demand for land" and the fourth phase, which commenced in 2014 using an EU grant, further reduced each allocation to 1 hectare. The use of pivot irrigation systems for these last two phases means that parcels are triangular-shaped and only sugar can be cultivated.

Each expansion phase incorporated adjoining farmers on customary land, who if they were found after measurement and recording to cultivate 2 hectares but were only being allocated 1 hectare of irrigated land, were not directly compensated for their loss but instead could nominate another person to be allocated 1 hectare, which would usually be an immediate family member. Compensation has never been paid because there has never been any resettlement and, according to members of the association, there is widespread support and demand for participation in the irrigation scheme. In these sugar-only expansion areas, land has been set aside between the pivots and other areas for food crop cultivate and livestock grazing. Many farmers continue to cultivate food crops on existing fields outside the scheme and most livestock is kept close to the homestead in the surrounding settlement areas. "Excess land" in the customary areas incorporated by each expansion phase has enabled farmers to retain sufficient land for subsistence cultivation.

Although the land within the Kasinthula sugar scheme still only has a leasehold title by the cane growers association for the original 96 hectares, the traditional authorities no longer have any direct role in land-related matters within the scheme as a whole. This includes the resolution of disputes, done now by the association themselves. And with customary law diminished, the cane growers association have incorporated into their constitution and rules a provision for the compulsory nomination by members of a next of kin and heir for succession of their land. This information is held in confidence, but the nominee must be a person who is a member of the customary group, village or traditional community area. There have been inheritance disputes but the association will always transfer the land of the deceased registered member to the nominated heir notwithstanding that this may be contrary to local customary law.

According to members of the executive committee of the association, the gender balance of registered member farmers is now 60% men and 40% women. The joint holding of land, by two people such as by spouses, is not permitted by the constitution and rules of the scheme. Because each farmer is merely a member of the association and the

land is held by the association under lease(s) and notwithstanding the farmers cultivate a specific and identifiable parcel, they are not legal owners of their parcels, and the farmers are requesting greater security of tenure.

4.4.2 PHATA SUGAR COOPERATIVE

The relative success of the Kasinthula irrigation scheme, prompted farmers in Phata village to develop a similar scheme. With the support of their traditional authorities, the Phata farmers decided to pool their land into a cooperative with a constitution and rules similar to Kasinthula but not the same. They also pooled their land after first measuring the size of each holding, resolving any disputes, and registering the farmer who then became a member of the scheme, but Phata did not subdivide it into separate pieces or plots but instead would cultivate it collectively as one farm using pivot irrigation systems in a cooperative (registered under the Cooperative Act of 2012).

To be a member of the scheme each farmer was initially asked to contribute a minimum of 1 hectare of land. Farmers with less than this should amalgamate or consolidate their landholdings. This proved problematic, so smaller landholdings were then allowed and given a corresponding fraction of a membership share. Each member would be allocated shares according to the size of the landholding each contributed. All the land within the irrigated area was previously cultivated, unlike Kasinthula.

Dissenters were apparently few in number and through a programme of advocacy and education, all landholders within the first phase area agreed to participate and contribute their land. Therefore there was no resettlement or compensation paid. Phase 2 is currently in the planning stage and land is measured and farmers registered; disputes are being resolved; reportedly, there is universal support for the expansion.

As in Kasinthula, farmers are required (compulsory) to nominate next of kin, not one but two successive heirs. This allows for the succession of a spouse before succession of children. In this way a surviving spouse, not local to the area, can remain a member or beneficiary of the cooperative for life whereupon the land shares would pass to heirs in accordance with local custom. Of course, nominations are restricted to family or community members, just as transfers are similarly restricted. However, subdivision of shares for transmission or transfer to multiple heirs is permitted. Individual sale of shares is not permitted and if a member wishes to dispose of their share other than to a family or community member, they can only do so to the cooperative. The share is then distributed among all remaining members.

All member farmers are expected to contribute their labour to sugar cultivation although the cooperative does employ labour who may be

members or locals to the village for specialist tasks, such as cane cutting, security, for example. Members may substitute their labour by employing others. The land in between the irrigation pivots is collectively cultivated with food crops, and farmers reap what they contribute to production. There is limited grazing land within the irrigated area and farmers keep most of their livestock elsewhere or close to their homesteads. Farmers may also have parcels elsewhere, such as close to the river, which is the typical landholding pattern in the Shire Valley.

Today, 60% of the 378 farmers are men and 40% women according to the chairperson of the executive committee. Phata and Kasinthula both benefit from EU grants for development or expansion.

4.4.3 KAMA CANE GROWERS COOPERATIVE SOCIETY LIMITED

KAMA is an abbreviation of the two Traditional Authorities Katunga and Maseya and was legally registered as KAMA Sugar Cane Cooperative Society Limited in September 2015. The objective of KAMA is to obtain income for a better life and food security by addressing climate change through irrigation.

Farmers used to grow rain-fed cotton and millet, but did not produce enough due to irregular rainfall and changing temperatures (too high and/or too low). The smallholder farmers were looking for irrigation when PressCane approached first the TA and then the GVHs. Farmers have agreed to sell sugarcane to PressCane for the production of ethanol and that 10% of the irrigated land can be used for food crops.

Organization

At the Group Village level 17 Business Units have been established consisting of the members of the Cooperative. The Business Units have been in existence for a long time and were used when growing cotton. The same land used for growing cotton is now going to be used for growing sugarcane. Each Business Unit is governed by the Business Unit Committee consisting of elected members, 50% women and 50% men.

Each of the 17 Business Units have elected one member into the Executive Committee. Each Business Unit have executives responsible for finance, communication, farm management, etc. 5 of the Executive Committee members are female and 12 male.

The KAMA Sugar Cane Cooperative was legally registered in September 2015 and the first annual meeting will be held in December 2016.

Membership and Shares

Criteria for being a member of the KAMA Sugar Cane Cooperative:

1. Being a farmer and having land within the project area
2. Paying a registration fee of MK 1000
3. Buy shares in the Kama Cooperative for MK 1000 each. One person can have a maximum of 20% of the shares only.

Shares are based on the size of the land within the project area. Land is valued at MK 5000 per hectare which equals 5 shares. Shares are registered in the name of the household head, which can be the husband or the wife based on who looks after the farm. The household head can decide to register some land to others (e.g. son, daughter) to be registered in their own right. The one in whose name the share is registered may nominate one to three persons who will inherit the shares in sequence. The shares will then be registered in the name of the person who has been identified as the one who inherits. This can be the wife, husband, son, daughter, etc. Shares are registered in one name only to avoid the negative effects of their cultural beliefs.

Establishment and Management

The total area to be irrigated within the 17 GV's is planned to be 6,000 hectares.

CODA has been engaged to conduct a survey and to design the infrastructure for 2,216 hectares for phase I using a grant from the European Union (EU) of €297,000, which PressCanehas helped to obtain. Identification and GPS referencing has been concluded in the first area that is planned to be irrigated, covering 2,216 hectares in 5 planned irrigation schemes. Of the total area 2,000 hectares will be under sugarcane production and 216 hectares is set aside for food crops.

This first phase covers over 2,000 member farmers within 15 GVs. The design is made with primarily irrigation by centre pivots and with water being pumped from the Shire River, but the financing of the construction and organisation activities are not yet in place.

KAMA anticipates that each member will obtain a lease of their future parcels in accordance with the new Customary Land Acts. This will help to maintain ownership of the land and farmers are at liberty to sell land. They are working with the Ministry of Lands on how to get this organized.

KAMA plans hiring a professional manager to manage the farm and to train the members in management. Eventually, after training, farmers' members plan to do part of the management themselves. KAMA is

planning to contract out the preparation of the farm, the construction of the electricity supply, the construction of the irrigation canals and infrastructure.

KAMA members will have priority in being employed by the contractors to do the work. The next priority for employment are the members of the surrounding communities.

Being employed by a contractor during the preparation phase is a mitigation measure to bridge the period between the current crop productions to income from sugarcane.

Each member of the cooperative will get a share in the food crops area and can decide for her/himself what to grow. Extension advice is expected on what crop is best to grow.

4.4.4 DIFFERENCE BETWEEN KASINTHULA, PHATA AND KAMA SCHEMES

On land issues, there are some notable differences between the out grower schemes:

- › The first phase of Kasinthula is situated on public land originally leased to the rice outgrowers' association, so this small part has a lease of 96 hectares, but the later phases were established on customary land and has not yet been secured by a lease.
- › Kasinthula covers around 1,800 hectares now in equal shares for each phase, while the shares of the Phata scheme are depending on the size of the original parcels of land brought into the cooperative. Phata covers around 800 hectares including the second phase.
- › The KAMA scheme will be much bigger, up to 6,000 hectares when both phases are realized. The sizes of shares are not finally decided upon yet.
- › Phata is established on customary land. However, to "improve their tenure security and to secure mortgage finance" Phata applied for a lease in 2012, and are considering re-applying after their original application was lost by the Ministry of Lands, Housing and Urban Development. Notwithstanding, Phata have developed the first phase and have paid three dividends from profits made so far and are planning the next phase extension, all on customary land tenure.
- › KAMA is on customary land as well, and is also planning to apply for a lease under the newly passed land laws.
- › Phata and KAMA, sited on customary land retains a role for traditional authorities, not in the management of the scheme but

for the customary practice of dispute resolution. Chiefs and village heads have no role in Kasinthula.

- > Kasinthula did not consolidate any lands as existing holdings were retained and cultivated for sugar or other irrigated crops, whereas in Phata all existing parcels were consolidated into one large farm. The same principle as Phata is going to be used for KAMA.
- > As a more recent scheme, Phata had to deal with instances where farmers had rented out all or part of their lands to landless farmers. Phata permits these rental agreements to continue and keeps a record of them, so that, for example the renter contributes labour and receives his or her portion of the dividend minus the rent. Kasinthula does not accommodate land rentals and therefore anyone renting at the inception of the scheme would lose access to the land.

4.4.5 SIMILARITIES BETWEEN THE SCHEMES

On land issues, the similarities are:

- > A large majority of farmers who occupied the land that is now part of both operative schemes were and are supportive. For the KAMA scheme all farmers have expressed their interest to be part of the scheme.
- > Farmer groups are well organised with high degree of participation; major decisions are taken at meetings of all farmers.
- > Little if any resettlement took place, as all farmers directly affected by the scheme agreed and participated. This is planned to be carried out the same way for KAMA.

4.4.6 PHATA AS A ROLE-MODEL

The Phata outgrowers scheme has been chosen as a role-model for the organisation of the future agri-business organisations related to the SVIP project. There has been several reasons for this, one of the primary is a very good organisation, capacity building and internal communication. It has been important from the start to get everyone to understand the principles of working together and establish a commercial farm, which have benefitted all the shareholders. A comprehensive information and training program has been part of the scheme from the beginning, resulting in a high degree of participation and commitment from the individual shareholders.

It has been important for the Executive Committee that Phata has not only been focused on the commercial farming. The subsistence agriculture has a high priority with establishment of common fruit orchards, vegetable produce fields and fish ponds. The products are distributed internally at low prices to the shareholders where any

excess products are sold at normal prices outside the scheme. This can both give the shareholders an additional income and help them to obtain a reasonable supply of food.

Another important parameter is the organisation of the work needed for both the commercial and the subsistence farming. The stakeholders in the Phata scheme have received shares of the total area corresponding to the size of their original parcel sizes. They no longer have a physical piece of land, which they can identify as their own, and the agricultural activities is handled centrally by a professional management. This results in an efficient and uniform agricultural production with a higher yield. The shareholders are obliged to contribute with a certain amount of work in the commercial production, but they have an option to employ others to do their share of the work. No matter what, all the participants will still be paid a proportional share of the total profit. As a whole, this agricultural organisation has raised the living conditions for the whole community.

Phata is securing the rights of the participants internally by appointment of a next of kin for each shareholder. It secures that the share will retain with the family in the case of death. The share can also be divided between several heirs within the family. The formal securement of rights has until now been done by an application for a corporative lease for the whole of Phata, since this has been the best way to do it under the old Registered Land Act. This has had the disadvantage that the individual farmer lost the right to sell his share outside the cooperative. With the new Land Acts it will be possible to register a similar organisation as a Traditional Land Management Area, and the farmers will be registered as owners of their individual shares in the same way as if they were owners of a private parcel.

4.4.7 OTHER IRRIGATION AND OUTGROWERS'SCHEMES

Nchalo Sugar Cane Grower Association

Apart from these outgrowers organizations a group called Nchalo Sugar Cane Grower Association (NSCGA) is working in the SVIP area. The group is working from their headquarter in Nchalo and have recently established an irrigation scheme of 200 hectares in Jombo, south of Nchalo in phase 2. The association is not geographically limited to a certain area, it has established a sub-group in Ndakwera in phase 1, Zone A and has plans for further irrigation throughout the Chikwawa District.

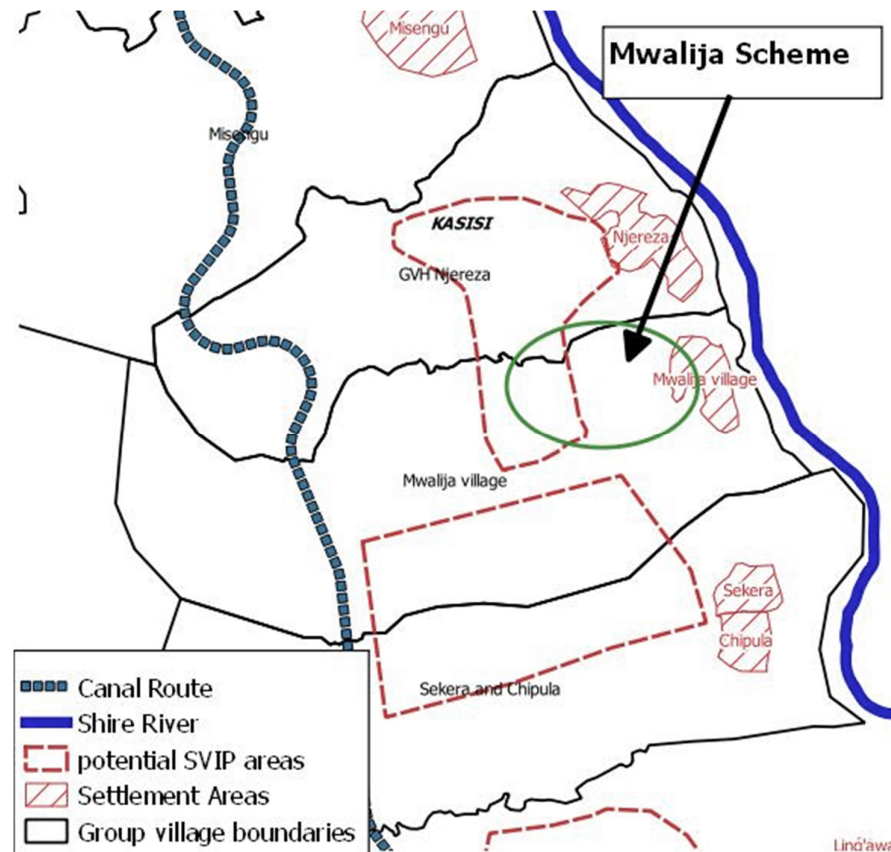
The NSCGA is registered as a company and not as an association, and among the other outgrowers the general impression is that NSCGA is more focused on making a profit for the company than helping the smallholders to better living conditions through irrigation.

Mwalija Irrigation Scheme

Mwalija Irrigation Scheme in Kasisi just south of the Majete Game Reserve was established by the help of MoAIWD in 2004 with 100 hectares, but due to lack of maintenance and capacity building the scheme quickly deteriorated and was down to 16 active members in the beginning of 2016. Recently an EU funded project has taken over the project and are planning to construct two smaller dams and a reservoir to enable 400 families in Mwalija and Njereza to irrigate 95 hectares.

The project is running until 2019 and from the map below it looks like this project will be combined with SVIP at a certain stage, since it is located close to the canal and in relation to areas that have been identified as potential additional irrigation areas for the SVIP.

Figure 10 Mwalija Scheme

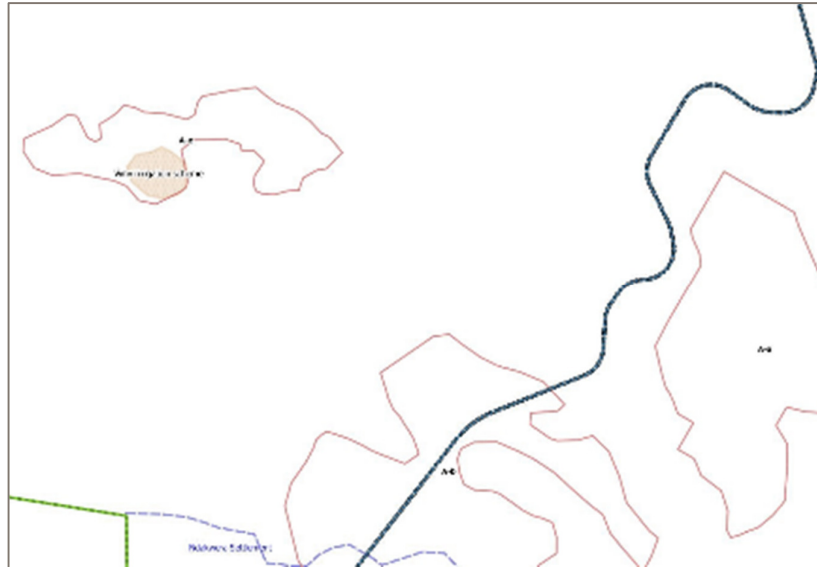


Vimvi irrigation scheme

A small irrigation scheme was encountered in GV Patalao in the T/A Chapananga in Zone A-e. It is a community run scheme with solarpanel driven water pumps. The area is around 29 hectares with

each member having a 0.1 hectare share. The main production in the scheme is maize. The Figure 11 shows the location of the scheme.

Figure 11 Vimvi irrigation scheme



4.5 Principles for Land Consolidation

The concerns expressed earlier in the MGDS and the ASWAp relates very much to problems found within the SVIP area. The need for a better use of land to obtain a higher productivity, the general scarcity of land which affects the coming generations and the need for securing the rights to the land. The possibility of irrigation will not automatically lead to a higher productivity and a higher standard of living if the individual farmers continue to grow subsistence crops like before without any organized plan. Therefore a kind of organisation of the farmers is needed to enter into an irrigation scheme, where the use of water can be controlled in relation to the type of crop to grow.

4.5.1 PRINCIPLE 1: LIMITED RESETTLEMENT

Other programs like the CBRLDP has focused on sustaining the local farmers and giving them better opportunities by the purchase of private estates and relocating a whole community to a new area, where they can continue to be smallholders with individual parcels.

This is not a feasible approach within the SVIP, the guiding principle is that there shall be as little relocation as possible, and the present community structures shall be maintained. That also means that the farmers who have to give up the land for the building of the canal or any other structure related hereto, shall be resettled and be given a similar land within the same community. This principle can be difficult

to follow, given the fact that all farmland already has been allocated to the smallholder farmers and there normally is no land available for new settlements. It is a growing problem when the next generation has to start a farm and can only get it if the existing landholdings are subdivided into smaller parcels.

A solution is to organize the total amount of land within an irrigation block including the land needed for the infrastructure in one scheme, and let all the farmers received a percentage share of the whole scheme corresponding to the percentage of land they have contributed with.

4.5.2 PRINCIPLE 2: IRRIGATION SCHEME MODEL BASED ON LOCAL EXPERIENCE

When looking at the ways of establishing organisations that will be able to manage the proposed irrigation schemes, it is obvious to use some of the organizational structures already implemented and accepted within the area like the outgrowers' schemes instead of introducing new unproved systems.

In relation to the land consolidation and resettlement issues, it is also important to emphasize that the establishment of the outgrowers' schemes has been done practically without any resettlement of the farmers affected by the infrastructure or the reorganisation of the land.

For Phata the farmers with land within the scheme came to be members of the cooperative with a share related to the size of their original parcels, but the people continued to live in the villages as none of the habitational areas were touched. The original crop area was 400 hectares, but Phata sugar cane production area is only on 300 has, as the remaining 100 has is used for the infrastructure (roads, canals, buildings) as well as food crops, woodlots and fish ponds for the member farmers.

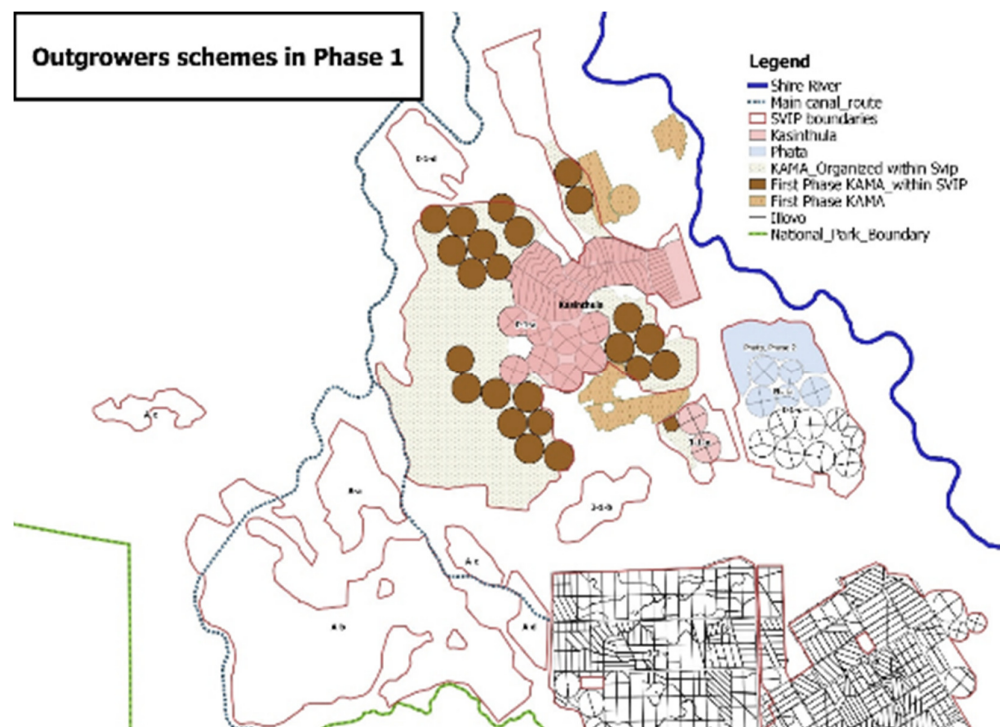
For Kasinthula the picture was a bit different. Also here no settlement areas were touched, and the village and the traditional authorities' structures were maintained. But here the farmers entered the various phases of the scheme with a fixed share (of 1-3 hectares depending on the phase), and they could identify their individual new irrigated parcels after the reallocation of the land. Thus they could keep their individual working attitudes towards the parcels in the irrigation scheme as opposed to Phata, where a person could not identify the results of his or hers individual effort.

The aforementioned outgrowers' schemes play a significant role within the Shire Valley Irrigation Project. Of the total area of 26,000 hectares in phase 1, around 14,000 hectares are customary land. Already organized within the customary land are the outgrowers schemes of Kasinthula with 1,800 has and Phata which is in the process of implementing a second phase, bringing the total area of commercial crops up to 800 has.

In addition to those, the newly organized cooperative KAMA of 6,000 hectares will have approximately 4,500 hectares within the SVIP area. KAMA is still in a very preliminary phase, a feasibility study and a detailed design has been made for phase 1, but no actual earthwork has been initiated. The important issue is that the organisation has been formed with Business Units, Executive Committee and Constitution/By-laws.

This means that around half of the customary land within phase 1 already have established organizations with fixed structures and executive committees, as can be seen from the following Figure 12.

Figure 12 Coverage Outgrowers schemes, phase 1



All smallholder farmers within the SVIP phase 1 know about the Kasinthula, Phata and KAMA schemes, and during the various community meetings and with other stakeholders, there has always been questions related to the possibilities of being engaged in similar outgrowers and irrigation activities, because the results from these existing schemes clearly have given the participants better living conditions with less risk of being exposed to famines caused by drought or flooding.

Especially the first phase of the Phata cooperative has shown very good results, and Phata is now establishing a second phase with 350 hectares. The KAMA cooperative has used the experiences from Phata when establishing their constitution with an elected Executive Committee, and includes the principles of size of shares in the

cooperative based on the amount of land the individual farmers and how to work the land as a whole.

Taking into account that the cooperatives also are securing the right to the land by applying for a lease for the cooperative and have established detailed regulations regarding family ownership and transfer of the shares, the Phata and KAMA cooperatives are obvious models for the organization of irrigation schemes within SVIP. The results of the stakeholders' consultations show a clear preference for the Phata/KAMA based model of farmer organisation, which is also an indication of the high level of acceptance of this known model.

4.5.3 PRINCIPLE 3: SECURE THE LAND RIGHTS OF THE PARTICIPATING FARMERS

As described above in section 4.3 the land tenure within the existing irrigation schemes varies from private lease to continue working on customary land. Both the existing and the newly passed land laws provide options for securing land rights but the rights are stronger under the new land laws. There are three options for securing land rights of the participating farmers:

- 1 Obtaining a lease of the land in the name of the legal entity (e.g. cooperative) under the current laws and securing the land rights of the individual farmer in the constitution and by-laws of the legal entity.
- 2 Establishing a customary estate in the name of the legal entity of the agri-business area and securing the land rights of the individual farmer in the constitution and by-laws of the legal entity. This can be done after the Traditional Land Management Area has been established.
- 3 Each individual farmer obtains the legal right to his/her piece of land and then rents out his/her land to the legal agri-business entity. The process is very time consuming because it takes time to survey and legally register the rights of each individual farmer after the establishment of the Traditional Land Management Areas.

The second option of establishing customary estates in the name of the legal agri-business area entity is preferred for various reasons. Firstly, the advantages of pooling the land together in one customary estate strengthens the common understanding of the farmers that they are managing a common farm in the interest of all. Farmers no longer identify with their original piece of land which makes it easier to take decisions on the use and management of the land. Yet, in case the agri-business unit fails, the farmer is entitled to a portion of the land in relation to his/her share in the agri-business unit that will be allocated as stipulated in the constitution and by-laws of the legal agri-business unit entity. Several criteria may apply as decided by the farmers when establishing their agri-business unit and customary estates, e.g. the

fertility of the land, proximity to their house, relation to their share, etc. This forms an excellent opportunity for the MoLHUD to pilot the implementation of the new land laws in an irrigation project. Reference is made to section 4.9 for more information on the pilot.

4.6 Implementing the Land Allocation and Consolidation Strategy

The process of establishing legal entities and obtaining the legal tenure of the land consists of three main steps: 1) Preparation, 2) Information and Awareness Raising, and 3) Support the establishment of legal Agri-Business Units and obtaining the legal tenure of the land. In addition, there are four supporting activities that need to be conducted continuously throughout the whole process period. These are: 1) Addressing crosscutting issues of gender, youth, vulnerable people, illiteracy and the poor, 2) Monitoring progress and results and adjusting the process when found necessary, 3) Grievance Redress Mechanism, and 4) Communication. Figure 13 below provides a schematic overview of the process.

Figure 13 Process to implement Land Allocation and Consolidation Strategy

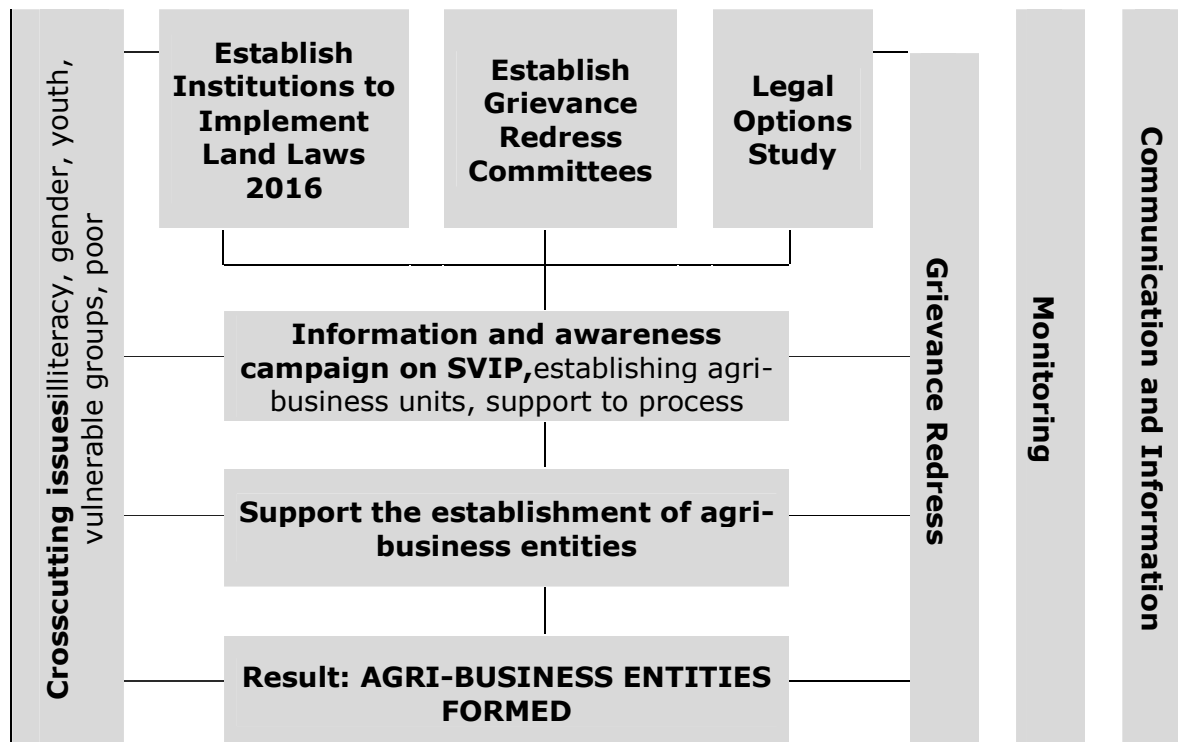


Figure 12 above shows the processes related to the implementation of the Land Allocation and Consolidation Strategy. For the implementation the following activities have to be carried out:

4.6.1 STEP 1: PREPARATION³⁴

The following activities will be implemented concurrently:

- > Establishing and capacitating the legal structures for implementation of the new land laws, including:
 - > Traditional Land Management Areas at the 5 TAs that form part of Phase 1.
 - > Land Tribunals at TA level in the 5 TAs that form part of Phase 1.
 - > Group Village Land Committees.
 - > Land clerks at GV level.
 - > District staff for land registration and addressing land issues.
- > Establishing includes electing the committees and recruiting the staff and developing their capacity.
- > Establishing and capacitating the Grievance Redress Committees at Group Village, TA and District Level.
- > Establishing and capacitating contact persons for the illiterate, youth and vulnerable groups and on gender issues.
- > Legal Options Study for farm organizations including the pros and cons of each legal option, such as:
 - > Registering Customary Estate as jointly owned or as individual parcels.
 - > The period of registration.
 - > How land rights for the participating farmers can be secured if the legal organization collapses.
 - > Crosscutting issues of gender, illiteracy, youth and vulnerable groups.
- > Establishing a Communication Structure, Processes and Procedures

4.6.2 STEP 2: INFORMATION AND AWARENESS CAMPAIGN

After the preparation an important step towards an implementation of the allocation and consolidation strategy is to create an awareness of the strategy, the implications and the benefits. It is important that the villagers get a clear understanding of how the irrigation project will affect them directly and indirectly and that the process is a voluntary process where no one is forced to be a part of the irrigation scheme,

³⁴ The capacitation includes training on gender and inclusion of vulnerable groups, youth and the illiterate

and feel that they cannot benefit from it. A series of awareness meetings have taken place already with participation of all the potentially affected Group Villages in phase 1. Members of the Phata Executive Committee participated in these meetings and presented the setup and structure of the Phata scheme, how they started the cooperative, and the benefits for the shareholders. The general reception were positive with a lot of questions and feedback, and it was important for communities to realize that the organisational setup for any future irrigation schemes were not some government theoretical invention but an already well-functioning scheme with a high degree of self-governing and independence.

- > Information and awareness raising which takes into account illiteracy, gender, youth and vulnerable groups on:
 - > The new land laws
 - > The need to create agri-business areas (commercial farms) with cut-off date and proposal to include those who lost land into the agri-business area organization
 - > Options for legal registration of the business area (from the legal options study)
 - > Options on how to pool the land into agri-business areas
 - > Grievance Redress Mechanism
 - > Contact persons for the illiterate, gender, youth and vulnerable groups issues
 - > How to access support to create business areas
 - > Commercial agricultural options and market information

4.6.3 STEP 3: SUPPORT THE CREATION OF AGRIBUSINESS ENTITIES

- > Create agri-business areas mainly through process facilitation and support to:
 - > Mapping the agri-business areas
 - > Create legally registered agri-business areas
 - > Determine the land use of the agri-business area
 - > Establishing customary estates (or other land options)
 - > Establish farm management/engage professional farm managers

4.6.3.1 DEFINE THE AGRI-BUSINESS UNITS WITHIN THE SVIP

An important element in the process of establishing legal agri-business units is to identify the size and location of the irrigated areas from: 1) the Technical Feasibility Study, and 2) the group villages involved in each, so the farm sizes can correspond to the proposals in the Agricultural Study.

Figure 14 below shows the existing and potential irrigation schemes in SVIP phase 1. KAMA has recently concluded a feasibility study with a design of the first phase, consisting of around 2,000 hectares of land located within the GVs which are members of the KAMA association. As can be seen in the figure the irrigation is primarily planned as centre pivots, and although KAMAs financing of this first phase has not yet been secured, it can be expected that it will be operational before the main canal of the SVIP project is finalised. Therefore, the future irrigation schemes within SVIP phase 1 has to take this KAMA design into account.

Based on the topographical conditions and on the background described above the Technical Feasibility Study Consultant has proposed where the branch irrigation canals can be located and how the individual irrigation zones can be designed with internal furrow canals and with standard paddy fields with a dimension of 800 x 200 meters.

Phase 1 consists of a number irrigation zones which vary a lot in sizes from 179 hectares (zone a-c) to 7,183 hectares (zone I-1-a) and as such are very different from a standard regular agro business block of 500 hectares as proposed by the Agricultural Study Consultant and Figure 14 shows how a possible distribution of irrigation zones into irrigation schemes can be arranged, taking into account the branch canals, the existing irrigation schemes and the traditional authorities' structures.

Table 13 shows that phase 1 can be divided into 22 irrigation schemes with an average size of 441 hectares. Some of the smaller proposed irrigation schemes will most likely be combined into larger schemes, especially where they are located within the same group villages, but a more detailed definition of the individual irrigation schemes is too premature and will require a series of meetings with the involved GVHs and TAs to determine the organisational setup and structures.

Figure 14 Potential Irrigation Schemes in Phase 1

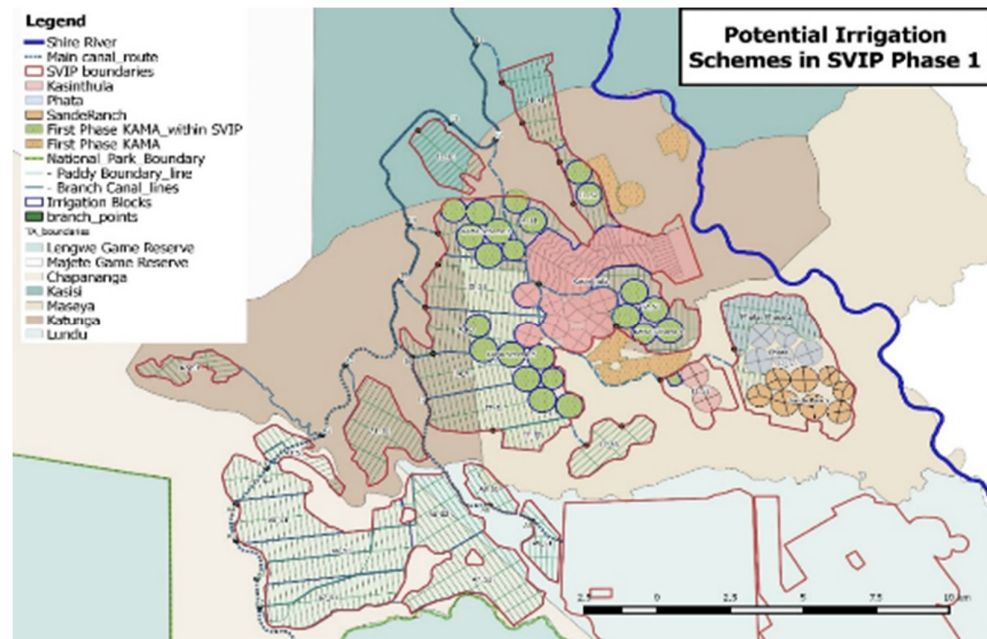


Table 13 Distribution of Irrigation Schemes /Agro business Areas in Phase 1

Zone	Branch Canal	Existing Scheme	area (has)	New Schemes	area (has)	TA	GVHs	Covered by existing organisation	Canal areas can be included	comments
I-1-a	I1	KAMA 2	122			Katunga	Salumenji, Mvula, Launji, Kantefa, Chinangwa	KAMA		KAMA Project, Phase 1, Scheme 2
I-1-a	I1			I1_S1	173	Katunga	Salumenji, Mvula, Launji, Kantefa, Chinangwa, Kabudula	KAMA	Branch canal	Can be combined with KAMA2
I-1-a	I1			I1_S2	444	Kasisi	Mbenderana, Chikhambi,		Branch canal	TA boundaries to be clarified
I-1-a	I2	Kasint hula	1622			Katunga, Maseya	Salumenji, Chinangwa, Biyasoni	Kasinthula		
I-1-a	I2	KAMA 4	438			Katunga	Paulosi, Isso	KAMA		KAMA Project, Phase 1, Scheme 4
I-1-a	I2			I2_S1	373	Katunga	Paulosi, Isso, Namatchuwa	KAMA	Branch canal	Can be combined with KAMA4
I-1-a	I4	KAMA 3	521			Katunga	Nedi, Nyamphota	KAMA		KAMA Project, Phase 1, Scheme 3
I-1-a	I4			I4_S1	335	Katunga	Nedi, Nyamphota	KAMA	Branch canal	Can be combined with KAMA 3
I-1-a	I5	KAMA 5	527			Maseya	Supuni, Molongeni, Mbande	KAMA		KAMA Project, Phase 1, Scheme 5

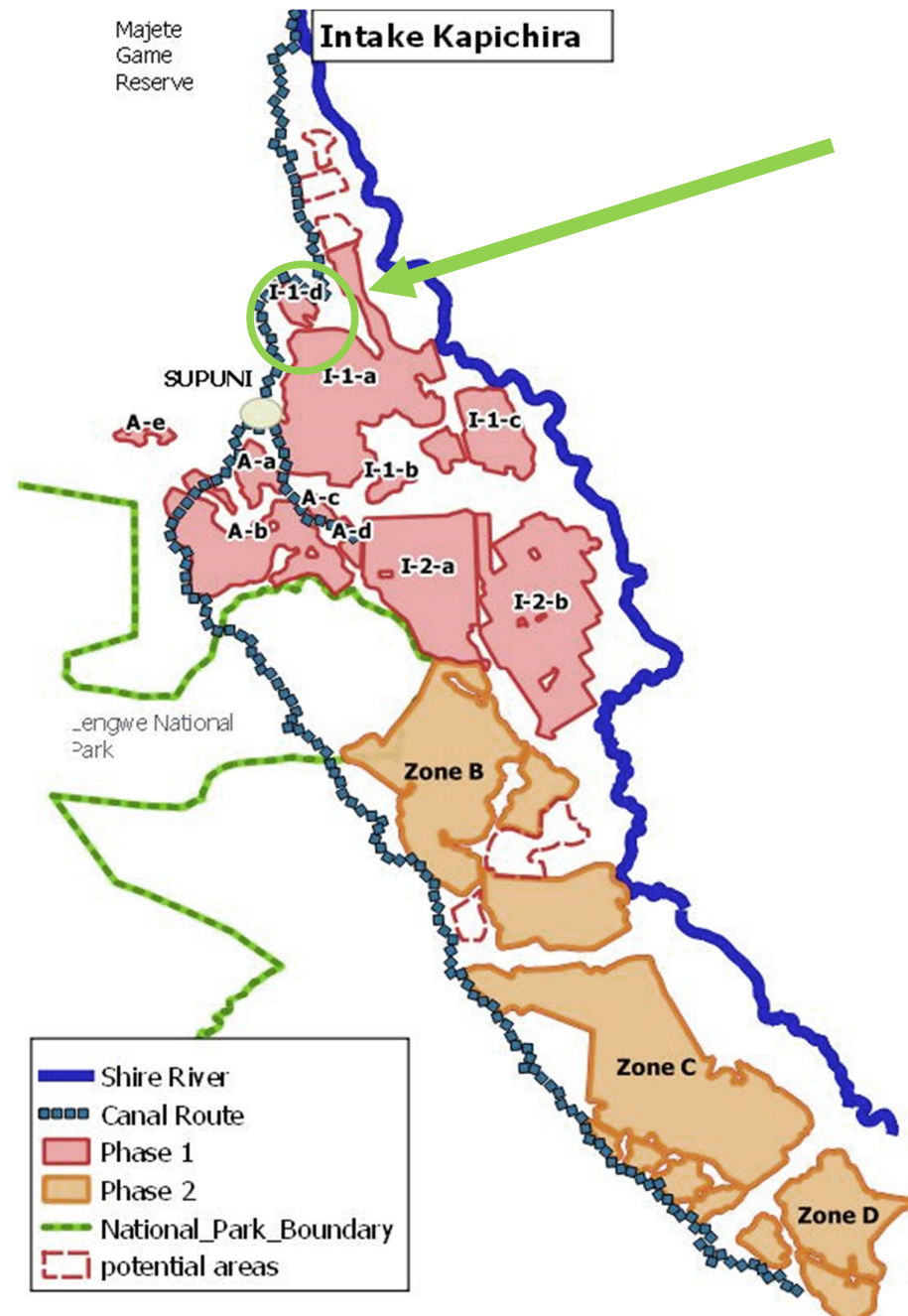
Zone	Branch Canal	Existing Scheme	area (has)	New Schemes	area (has)	TA	GVHS	Covered by existing organisation	Canal areas can be included	comments
I-1-a	I5			I5_S1	626	Katunga, Maseya	Nedi, Nyamphota	KAMA	Branch canal	Scheme boundaries related to branch canals
I-1-a	I5			I5_S2	436	Katunga, Maseya	Supuni, Molongeni	KAMA	Supuni & Branch Canal	
I-1-a	I5			I6_S1	448	Katunga, Maseya	Supuni, Molongeni	KAMA	Supuni Canal	
I-1-a	I5			I7_S1	574	Katunga, Maseya	Supuni, Molongeni	KAMA	Supuni Canal	
I-1-a/ I-1-b	I5			I7_S2/ I7_S3	525	Maseya	Mbande, Andrea	KAMA	Branch canal	
I-1-c	I2	Phata 1+2	895			Maseya		PHATA		
I-1-c	I2	SANDE	750			Maseya		ILLOVO		
I-1-d	I3			I3_S1	386	Kasisi	Chikhambi, Fombe		Feeder Canal	
I-1-e	I2	Kasint hula	139			Maseya		Kasinthula		
I-1-e	I2			I2_S3	214	Maseya	Namatchuva			Not planned
I-1-e	I2	KAMA4	18			Maseya		KAMA		
Zone I-1			5032		4534					
A-a	A1			A1_S1	596	Katunga	Supuni, Thuboyi		(Bangula Canal)	
A-b	A3			A3_S1	253	Chapanan ga	Mandrade, Mkanyoza		Bangula Canal	Can be combined to 1 scheme
A-b	A4			A4_S1	345	Chapanan ga	Ndakwera, Mkanyoza		Bangula Canal	
A-b	A5			A5_S1	439	Chapanan ga	Ndakwera, Mangulenje		Bangula Canal	
A-b	A6			A6_S1	913	Chapanan ga	Ndakwera		Bangula Canal	
A-b	A6			A6_S2	550	Chapanan ga, Lundu	Kampani		Branch canal	
A-b	A7			A7_S1	665	Chapanan ga	Ndakwera		Bangula Canal	
A-b	A7			A7_S2	770	Chapanan ga	Biliyati, Fote, Ingadzi, Jailos		Branch canal	
A-c	A8			A8_S1	183	Lundu	Zyuda, Jailos		Supuni Canal	Can be combined to 1 scheme
A-d	A9			A9_S1	233	Lundu	Tomali		Supuni Canal	
A-e	A2		29	A2_S1	210	Chapanan ga	Patalao, Chikanyenda		7,5 km branch not included	including exist. Wimwi scheme
ZONE A			29		5157					
I-2-a	Sup uni	Illovo	4686			Lundu				Illovo
I-2-b	Sup uni	Illovo	6578			Lundu				Illovo
Zone I-2			11264							
TOTAL Phase 1			16325	22	9691		26016	(Total Existing and new)		

Zone	Branch Canal	Existing Scheme	area (has)	New Schemes	area (has)	TA	GVHs	Covered by existing organisation	Canal areas can be included	comments
Average New irrigation schemes					441					

4.6.3.2 AN EXAMPLE OF LAND ALLOCATION IN AN AGRIBUSINESS UNIT:

The principles described above for the new proposed irrigation blocks within SVIP can be exemplified by looking at the irrigation block I-1-d of 386 hectares which is located in the north-western part of phase 1, see Figure 15 below.

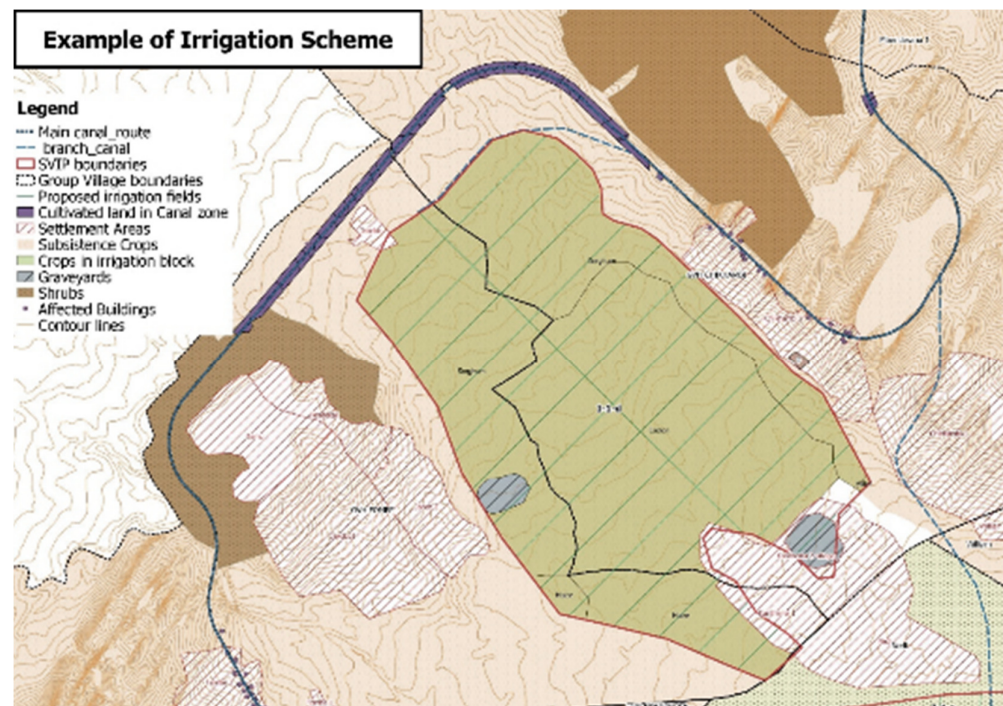
Figure 15 Irrigation Zones in SVIP



The irrigation block I-1-d as identified by the Technical Feasibility Consultant and can be seen more in details in Figure 16 below. The area is gently sloping from the north-western part down to the village of Kanthema. It is farmland predominantly with cotton, maize and sorghum divided into smaller individual parcels, which belong to the people in the nearby villages Chikhambi 2, Pendekali, Jakobo 1 and 2 and Kanthema 1 and 2.

The Main Canal alignment runs along the contour lines around a little hill north of Chikhambi 2 and then continues through the farmland north and northwest of the irrigation scheme with a branch canal going into the scheme, before it continues around the hill containing the villages of Semu and Pendekali. In the detailed land inventory for the main canal it was found that around 3 km of the canal zone was cultivated in a width of 60 metre (40 metre canal + 20 metre temporary land), covering around **16 hectares**, divided into 33 parcels. The remaining main canal adjacent to the irrigation block is not cultivated and consists mostly of shrubs and small trees. Between the canal and the proposed irrigation blocks there is a 250-300 m wide stretch of land of **70 hectares** also divided into several parcels used by the villagers. The total of these areas is around **86 hectares**.

Figure 16 Irrigation block in Zone I-1-d



The 6 villages surrounding this irrigation block, which belong to the 2 Group Villages Chikhambi and Fombe will very likely all have parcels in the area, and it will be obvious for them to identify it as an agribusiness area and agree with the two Group Village Headmen that the area belonging to farmers with parcels within the area will get registered as a Customary Estate under the new Customary Land Act.

It will be the farmers themselves, who will decide the extension of the Customary Estate and whether it shall include only the defined irrigation block or it shall include all the farmers who have cultivated areas close to the irrigation block. This could include the 16 hectares of land directly affected by the main canal, but could also include the additional 70 hectares between the main canal and the irrigation block. It is not imperative that the land is irrigable, it could be used for grazing areas, common rainfed food crop areas or fruit orchards and in this way form a part of the Customary Estate and its various activities.

As earlier described the local land committees can also use some of the aforementioned areas between the irrigation block and the canal line.

There will also be people affected by the main canal structures, who not naturally belong to the villages that will be part of the irrigation scheme, as the figure above also shows. At the left side of the figure the canal goes around another village Semu, which most likely will not be part of the scheme. As the area here is identified as shrubs and not cultivated, there will be no obvious reason for including these landowners. They will be compensated either by cash or by reallocation of land in another area, if any unallocated land is available within the Group Village.

The same situation occurs, where the Main canal line curves around a hill north of the village Chikhambi 2. It is a hilly, rocky area and although the land is allocated to members of the villages, there is no cultivation of the land. As this land apparently is not important as the livelihood basis for the landowners, a cash compensation for the land could be an option instead of including them in the irrigation schemes.

4.6.4 ADDRESS CROSSCUTTING ISSUES (GENDER, YOUTH, VULNERABLE GROUPS, ILLITERACY, THE POOR)

Crosscutting issues will be mainstreamed into all project activities. For example:

- > All training curricula will include sessions on the crosscutting issues in which each issue is explained and ways to address the issues are learned.
- > All training materials will be gender, youth, vulnerable groups and poverty sensitive and provide ways and means to address each.
- > Contact persons will be identified, trained and supported throughout the process. The support will include providing back-up when required, providing the resources to implement their tasks, ensure the contact persons are aware of the project structures and procedures and have the required forms. In addition, they should receive an incentive/remuneration for their input.

- › Communication and information will be accessible to all, also those that are illiterate and without access mass communication media such as TV, newspaper and radio, Further, communication will be crosscutting issues sensitive and address crosscutting issues.

4.6.5 CONTINUOUS MONITORING

Monitoring of progress and outcomes/results is to take place continuously and the processes, procedures and implementation mechanisms to be adjusted if so required. An independent group of monitoring experts will be engaged to conduct the monitoring of the LTDACS, GRM and RPF as these are closely related. Reference is made to the RPF for more information on the monitoring. Monitoring data will be disaggregated on gender, youth, illiteracy, vulnerable groups and poverty where possible and assess how these crosscutting issues and communication and information are addressed.

4.6.6 GRIEVANCE REDRESS MECHANISM

The PAPs have to have an opportunity to express their grievances and have these addressed throughout the process. The PAPs have the option of using any of the existing channels for having their grievances addressed, but also the opportunity to use the project grievance redress mechanism (GRM). The reasons for establishing the project GRM and its implementation are described in the GRM in APPENDIX C:

4.6.7 COMMUNICATION AND INFORMATION

Continuous communication and provision of information on the proposed SVIP agri-business units and the investments needed for establishing these units. The communication will also focus on the agricultural issues and include costs and potential benefits as well as the risks. Apart from the land allocation and consolidation issues it is important to include handling of conflicts, farm investment decisions, farm organization, crops, livestock, fisheries/aquaculture, potential markets, potential resettlement and associated costs of compensation, and cost of water. These discussions are proposed to be handled by a service provider, supported by local government.

4.7 Critical Issues in the Land Allocation and Consolidation Process

This section presents the important steps in the land allocation process and the related risks:

- › The boundaries of the five Traditional Land Management Areas (TLMA's) affected by the first phase of SVIP have to be defined and demarcated. The procedures are not yet known, but it will require that a number of "conflicts" or uncertainties regarding the TA boundaries, which have been encountered in the land inventory, have to be clarified.

- › It is assumed that the newly passed Land Laws will be enacted and an effective date announced in time for the land allocation and consolidation process and/or that it can be worked out with the MoLHUD on how to pilot/implement the law in the SVIP. There is commitment from the MoLHUD so the risk is considered small.
- › The setting up of local Land Committees at Group Village level will also require a clarification of the number of GVs within the 5 TAs in SVIP area, and what areas they are covering. Officially only 13 GVs are gazetted and recognized by the local district government, but the list of GVs are quite outdated and the land inventory has revealed that the Traditional Authorities themselves recognizes more than 20 GVHs within SVIP.
- › Establishment of Grievance Redress Committees at the same GV level and at district level. The GRM must address all complaints from each person in the same way in an objective and fair manner without discrimination. This is a risk and a challenge that can be addressed through transparency and close monitoring as described in the GRM attached in appendix C
- › Awareness campaigns explaining the pros and cons of participating in the irrigation schemes, so the farmers understand that they will give up their present land parcels for shares in a cooperative (or other legal entity of their choice), where it will be necessary to work together to obtain a higher and more secure living standard. The awareness campaign also have to emphasize that the farmers will maintain their rights to the land. It might be in form of a share of a cooperative or as an individual lease.

An important factor is how much land the communities want the irrigation schemes to include. Since the schemes are going to benefit all who have land and all who can and are willing to participate, the Group Village Heads or the new appointed Land Committees most likely will seek to include as many farmers as possible, if they have parcels within or close to the defined irrigation blocks. It will increase the living conditions for a greater part of the villages and reduce the possible tensions that could arise, if there were people benefitting inside and just outside the schemes.

With this structure any involuntary reallocation of land will be very unlikely because the people directly affected both by the main canal and the internal canal and road infrastructures will get a share in the cooperative relative to their original parcels in the same way as the farmers who has land directly placed on the new irrigated parcels.

Although the general feedback is positive, and everybody participating in the stakeholders' consultation have expressed interest in participation in the irrigation schemes, there may also be a few people, who do not want to be a member of the cooperative and want to continue cultivating their rain fed land as individuals. The Land

Committees have to decide how to deal with these people, if their land is within the irrigation scheme. They can get fully compensated by cash, or it might be possible for the local Land committees to reallocate them to other land within the communities. Although there generally are no unallocated land available, it will in theory be possible to make a swap with the landowners outside the physical irrigation blocks who will get a share of the scheme.

As no settlements are located outside the village habitation areas, there will only be a need for actual resettlements of houses and their surroundings in the few cases where the canal line passes through a habitation area. This will happen in the villages of Supuni and Fombe, but in general these villages are not very densely populated with houses relatively far apart. It is therefore possible to locate the canal without many conflicts with the houses, and where it cannot be avoided, it will be possible for the GVH to identify a new location, where the affected family can construct a new house within the village.

4.8 Management of the Land Allocation and Consolidation Strategy

The management of the land allocation and consolidation strategy should be done in close collaboration with the implementation of the Agricultural Development Strategy, as the land allocation is closely related to the formation of the farmer's cooperatives or companies.

The proposed farmer commercial organizations (cooperatives/trust/companies) will each have formed interim committees, which have to deal with issues like:

- > Extension of participation in the irrigation scheme
- > Preparation of a land use plan
- > Discussion and agreement on land consolidation methods
- > Dealing with conflicts
- > Demarcation and survey
- > Formal land right documents

This process is expected to take about two years, supported by specialist service providers. The service providers would each provide a Technical and Sociological team, working in close collaboration with a Public Support Team with officials from the Local Government. MoAIWD and MoLHUD and anchored to the Project Implementation Unit.

Apart from the local committees a Representative Farmers Coordinating Entity have to be formed. Such a body should deal with negotiations and control of the use of water for all the irrigation schemes. It is anticipated that at a later stage such a body could grow into a broader representative organization involving farmers' associations and participating processing, transport and market

entities. This would then be an effective advocacy body for all participants involved in the SVIP project.

4.9 Piloting the New Land Acts

During the consultancy process it has been discussed with WB/FAO whether SVIP could be used as a pilot project for the implementation of the new Land Acts, with the establishment of new Land Committees and definition of Traditional Land Management Areas (TLMA's) within the SVIP area.

In September 2016 the first four new land laws, among them the Customary Land Act, were signed by the President, (the Acts are more detailed described in chapter 2.3) and although the procedures and regulations are not yet in place, the SVIP project will create a good opportunity for the MoLHUD to investigate the various issues related to the definition of the TLMA's and Land Tribunals and the establishment of Local Land Committees at Group Village level. Once these are in place the establishment of Customary Estates can be piloted, that will form the legal entities for the individual agri-business units within SVIP.

The land allocation strategy should be combined with the implementation of the new Land Acts to secure the rights of the landholders. Although there is a positive response among the smallholders to establishing farmer's cooperatives within the SVIP project area, it is important to convey the message that the individual smallholders shall not lose their right to their land. They will have to exchange their current parcels for a share in an organisational structure, where they will work together with the other farmers and share the benefits.

The new Customary Land Act describes how the rights can be secured by registering a Customary Estate within a Traditional Land Management Area. Such a Customary Estate can consist of a parcel of land with farmers registered as shareholders in the cooperative.

The possibility of obtaining an individual customary lease has only recently been included in the new laws and it is therefore important to clarify during the establishment of the irrigation scheme organisation how the shares will be defined and secured. If the shares of the cooperative or a similar organisational entity are in proportion of what the farmers originally had and the allocation is without any physical definition on the ground (which is not the case for example at the Phata outgrowers), it will be difficult for the shareholders to apply for an individual lease for their share. This process will require a survey, demarcation and registration of the individual parcel.

In the situations where the share is physically identifiable on the ground, the individual shareholder can get an individual lease for the share and will be able to sell it or subdivide it. However, it will be a

time-consuming and costly process to demarcate and survey all these individual parcels, and a solution can be to secure the rights with a lease of the whole irrigation scheme as one Customary Estate. At a later stage the individual parcels can be surveyed and given leases. Implementation of the new land laws in Chikwawa together with implementation of SVIP, will need coordination and support of the MoLHUD and the Local Government on various issues:

- a. Setting up new local committees at Group Village Level, and staffing the required district level institutions
- b. Designing and formally approving the registration forms and other forms that may be needed under the new legal framework
- c. Demarcating the 5 Traditional Land Management Areas (TLMA), which will first require clarification of the methodology to be used. If registration of the TLMA lease is under the title system (Land Registration Act) then the land could be defined with general boundaries, delineated on a suitable scale map, and a detailed cadastral survey would not be necessary.
- d. Obtaining from the Land Commissioner a Certificate of Customary Land for each TLMA.
- e. Verification of existing land holdings through an informal survey.
- f. Participatory land use plan at GV level.
- g. Land holding consolidation into a a customary estate (several options, tenancy in common, in form of trust).
- h. Once land consolidation is completed, systematic process of registering the resulting family/household/individual parcels, outside of the commercial block but within the GV boundary, as private customary estates.

APPENDIX A: Land Tenure and Land Use Maps

A.1 - Land Use Map, phase 1

A.2 - Land Use Map, phase 2

A.3 - Land Tenure Map, phase 1

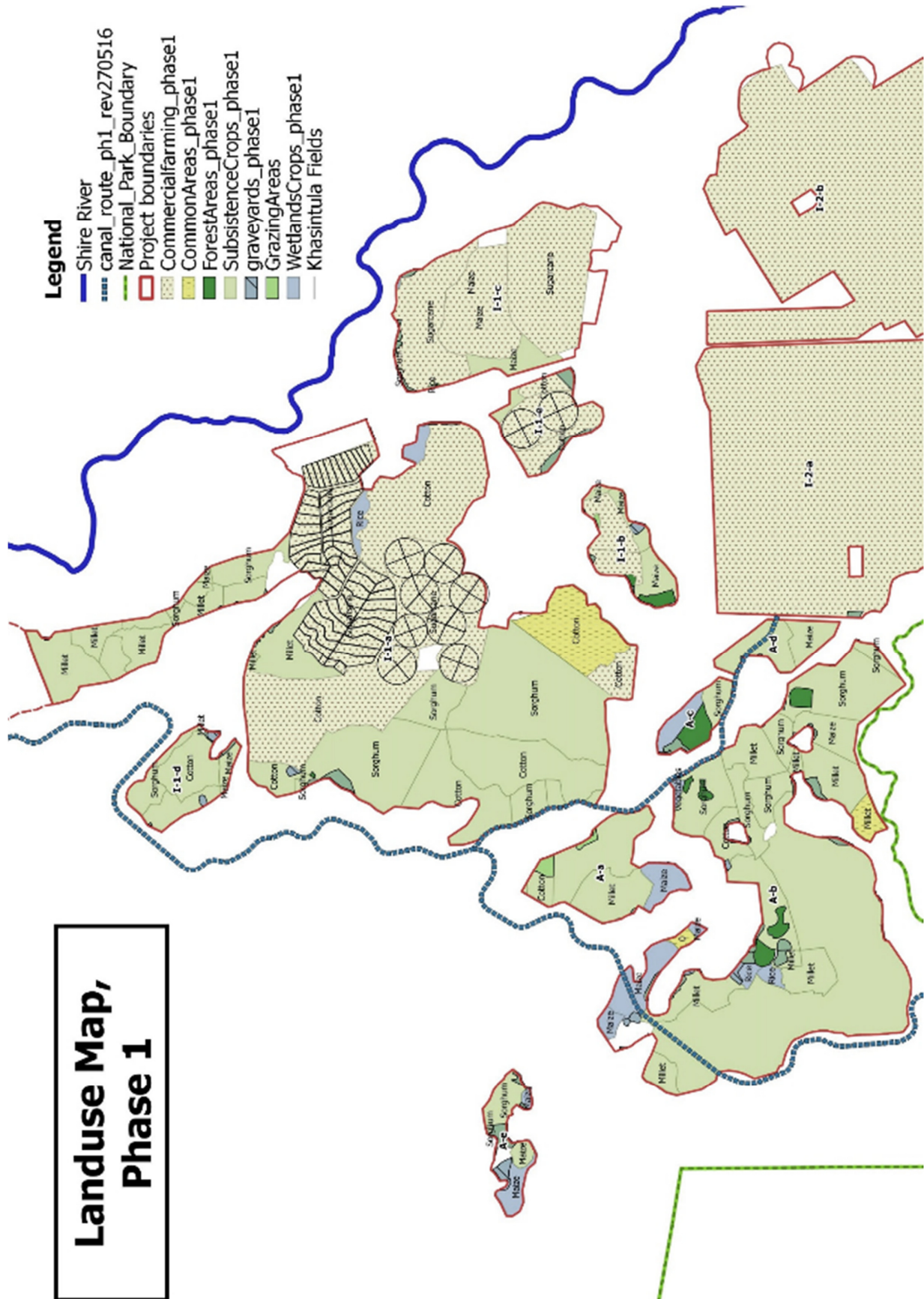
A.4 - Land Tenure Map, phase 2

A.5 – Local Important Sites, phase 1

A.6 – Local Important Sites,
phase 2 - map 1

A.7 – Local Important Sites,
phase 2 - map 2

A.1 - Land Use Map, phase 1

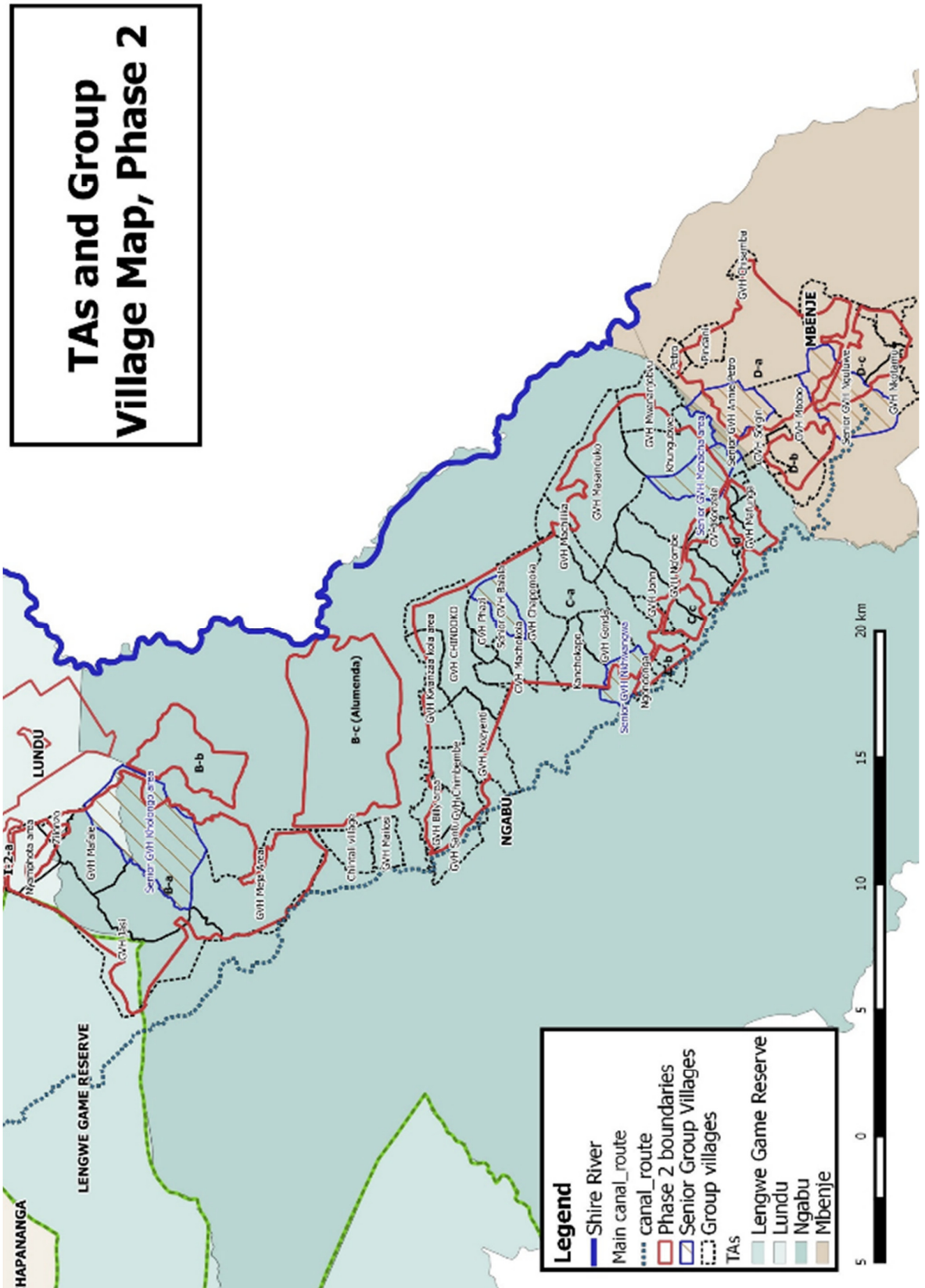


**Landuse Map,
Phase 1**

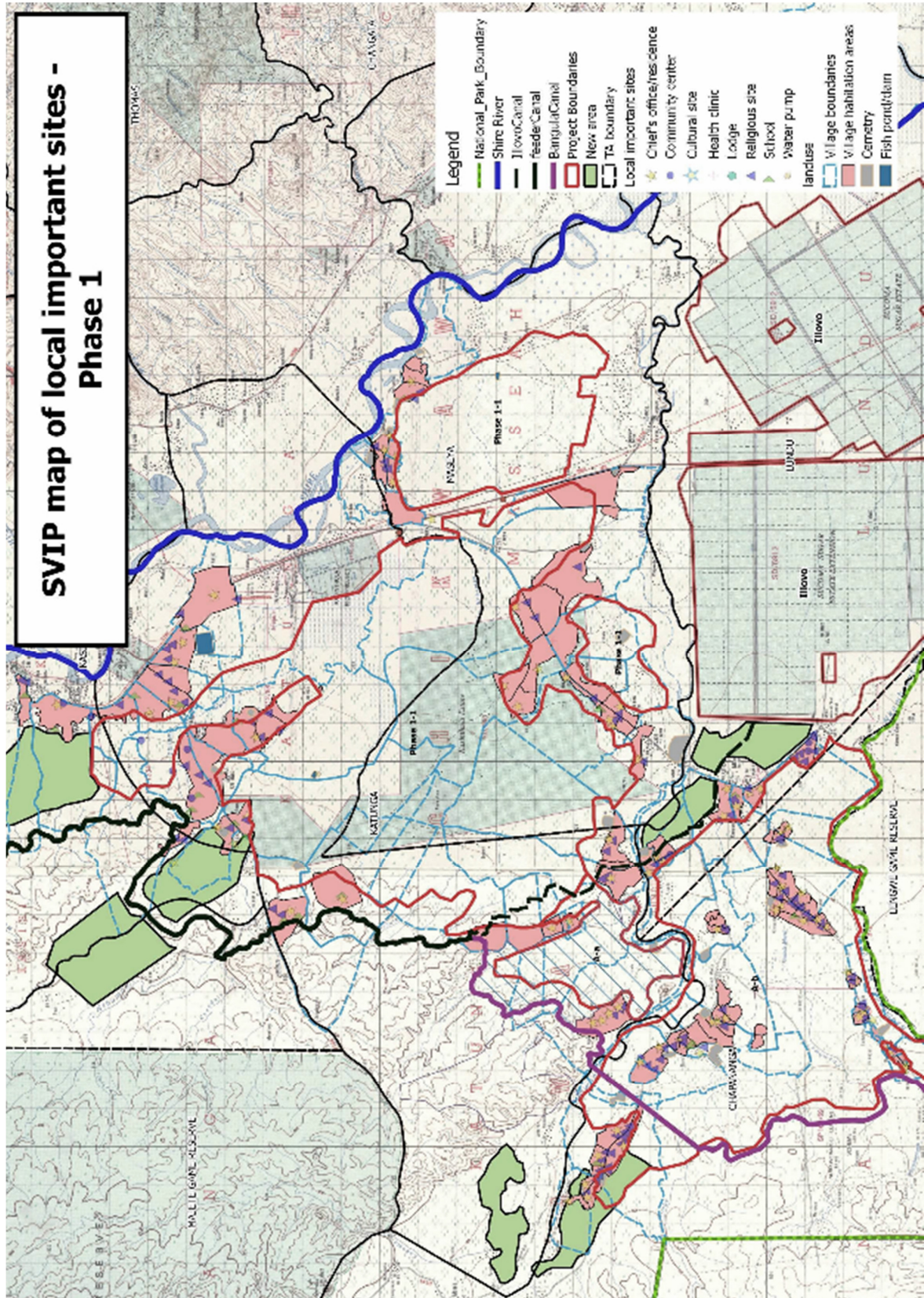
A.2 - Land Use Map, phase 2



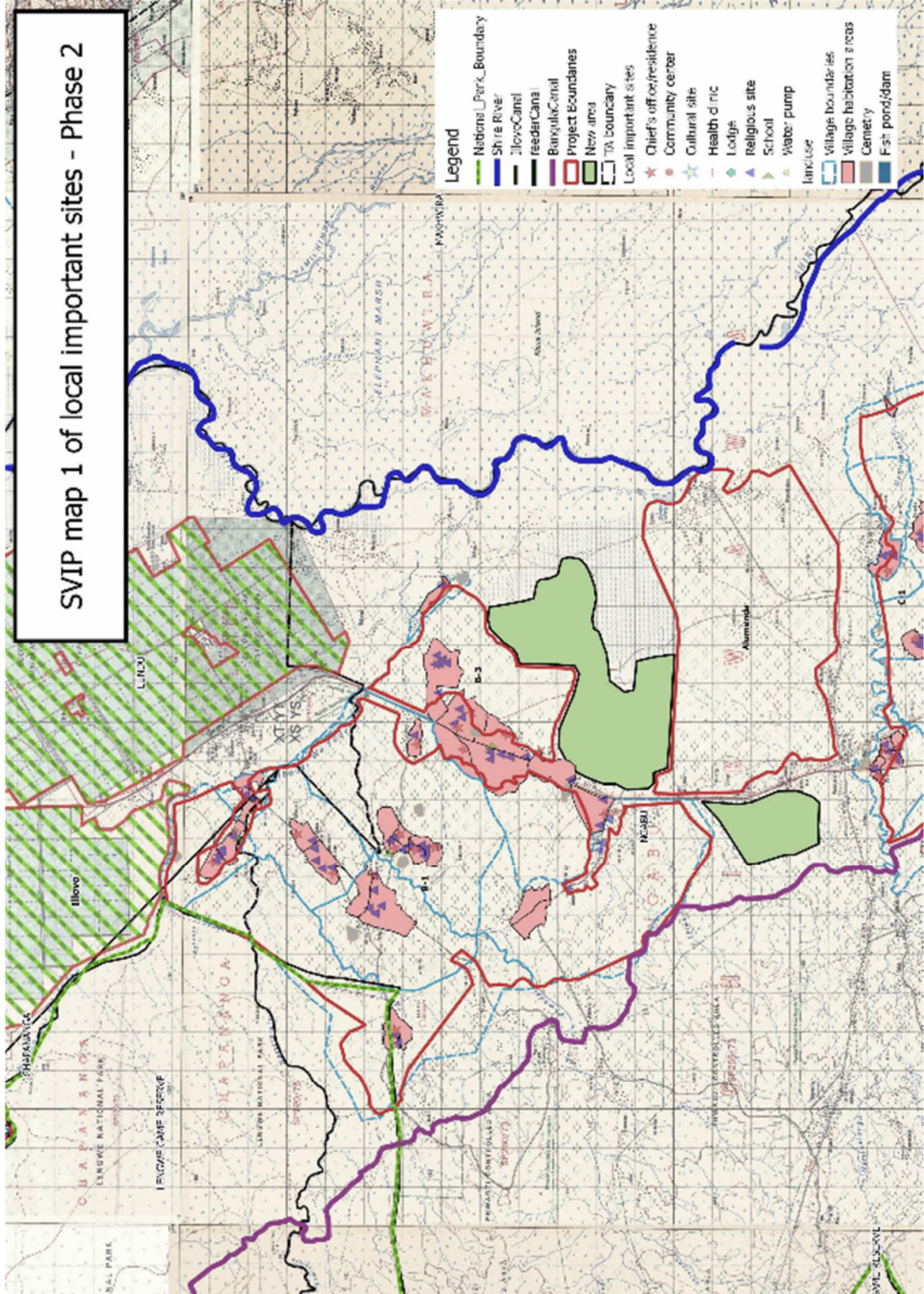
A.4 - Land Tenure Map, phase 2



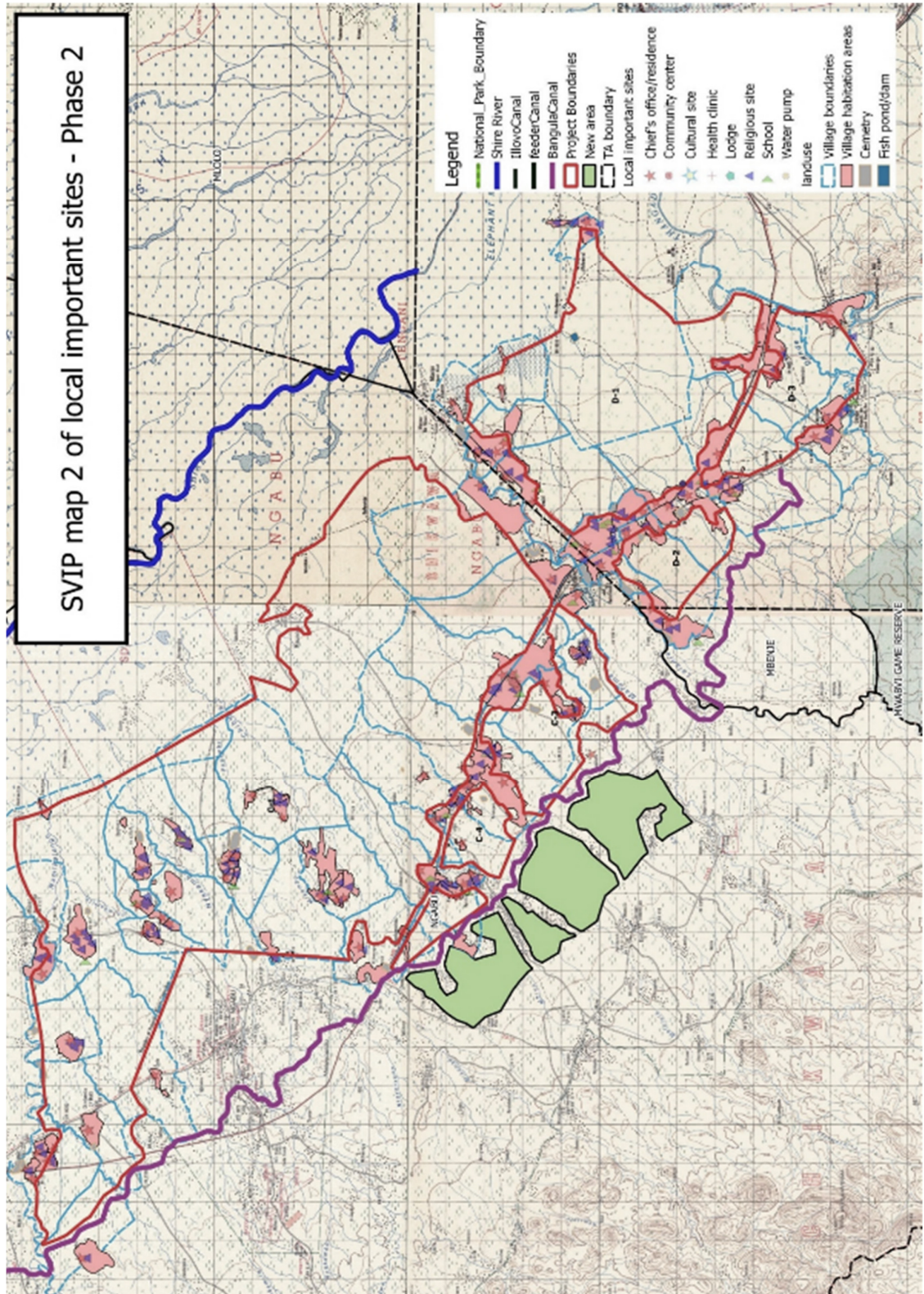
A.5 – Local Important Sites , phase 1



A.6 – Local Important Sites, phase 2 - map 1



A.7 – Local Important Sites, phase 2 - map 2



APPENDIX B:

Detailed Land registration in Main Canal Line in phase 1

Canal alignment for phase 1

The Main Canal alignment is divided into 3 sub-stretches, the Feeder Canal from Kapichira Dam until the Group Village of Supuni of 33.7 km, and the Supuni Canal from Supuni to Illovo of 10.6 km, and the first 18,4 km of the Bangula Canal north of the Lengwe National Park which is part of Phase 1. In total 62.7 km.

Methodology for the Detailed Land Tenure

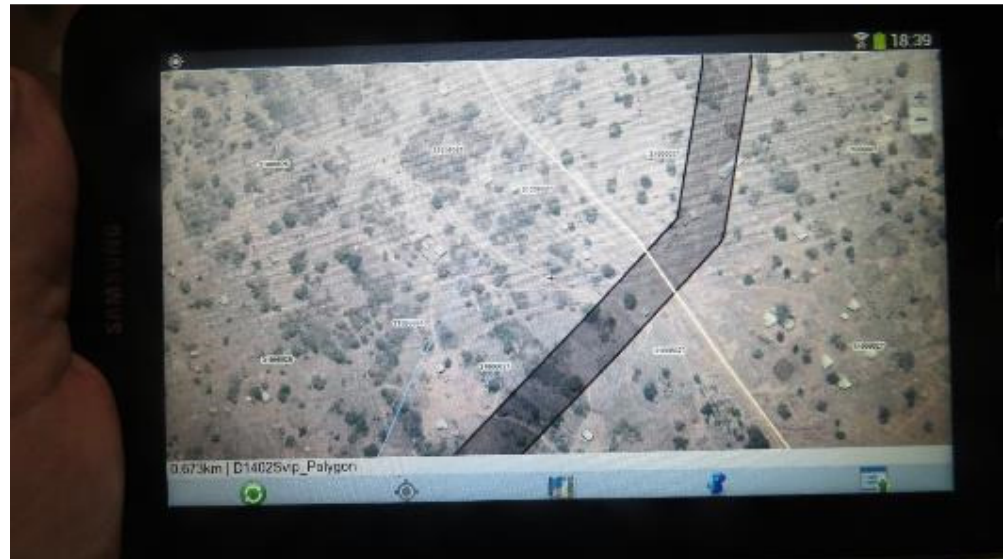
A detailed diagnostic study of the area required for the main canal and main branch canal in phase 1 was carried out for resettlement and compensation purposes. It was built upon the methodology used earlier but provided more details, such as the location of the parcels, the current owners and users, and the main crops grown at present. The parcels were registered using portable tablets with GPS on which detailed orthophotos were installed where the canal alignment also can be seen. The extension and delimitation of the affected parcels was then digitized on the spot together with information about parcel owner, land use, buildings, access, etc.

The compilation of the detailed land tenure was a registration of the present situation, not a precise demarcation of the boundaries of the affected parcels and the canal width. With the registration it will be possible to get an overview of the number of parcels with the type of crops, so it can be estimated how much compensation should be expected for both land required permanently and temporarily for construction purposes.

The digitalization in the field was carried out by 4-5 mapping assistants equipped with a tablet with a GPS and on which a Danish developed mobile GIS program, called Gis4Mobile, is installed as shown in Figure 17 Canal alignment with orthophotos on the tablet below.

The registration process was carried out in close cooperation with the traditional authorities and the communities in order to obtain a clear understanding of the purpose of the registration.

Figure 17 Canal alignment with orthophotos on the tablet



The following information was collected during this process:

- > Village name
- > Owner of parcel
- > Customary owned/rented/community owned/Private lease
- > Name of renter and renting period
- > Conflicts
- > Land use (Crop/Forest/Grazing/Settlement/Graveyard/Not Used)
- > Crop type
- > Fruit trees and other large trees

For the buildings within the buffer zone the following data was collected:

- > Village name
- > Building type (residential/commercial/community)
- > Name of Household head
- > Household size
- > Number of rooms
- > Materials (Wall/Roof/Floor)
- > Dependent buildings (Bath/kitchen/storage/animal house/pen)
- > Borehole/water point

A total of 621 parcels and 127 buildings were identified within phase 1. After the identification of the buildings and parcels in the field for a village/group village, a map was produced with a list of names and given to the GVH, so it was possible for the PAPs to verify their names and parcels and return with corrections before the finalization of the maps.

APPENDIX C:

Grievance Redress Mechanism