



Land Governance in Malawi

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Abstract

Malawi is a landlocked country that lies in the Great Rift Valley. It is flanked by mountain ranges and high plateau areas. Early human inhabitants of Malawi date to 8000–2000 B.C. and were nomadic. Land use was characterised by conquest. The boundaries of Nyasaland (now Malawi) were decided at the Berlin Conference of 1884. During the colonial rule land was categorised as Crown, Private under Certificate of Claim and Native Trust Land. At independence in 1964, Malawi's land was designated as public, private, or customary land. In 2016 a new classification was introduced namely; Public Land and Private Land. Customary Land as a classification of land was abolished. Private land in this case include freehold land, leasehold land and customary estate.

The declaration of Nyasaland (now Malawi) by the British as a British Protectorate in 1891 marked the beginning of the introduction of the British legal system including land management and administration.

Land question in Malawi has been one of the major challenges for the colonial administration as well as the current administration. Over the years, several commissions of inquiry on land tenure have been established to solve the conflicts that have been fuelled by the existence of customary land tenure alongside the western statutory laws. The latest commission of enquiry has culminated into the approval and gazetting of the Customary Land Act of 2016 whose aim is to formalise customary land rights in customary estates.

The Ministry of Lands, Housing and Urban Development is the custodian of land governance issues in Malawi. Currently, Malawi uses private conveyancing system, a deeds registration system and a title registration system. Previously, the title registration system was decentralized to the district level but only operated in very limited areas.

In Malawi the major causes of land disputes are disagreements over ownership, boundaries and access to and use of land and water. The current Customary Land Act of 2016 provides for land dispute resolution to be handled by the judiciary in matters of law, while matters of fact are handled by tribunals. The Act does not give traditional leaders any role in dispute resolution. Land proceedings and disputes are generally on the rise and it is desirable that suitable mechanisms for the whole country are established and maintained

The property taxes are assessed based on valuation of property which is supposed to be updated every five years through Quinquennial Valuation Roll (QVR) and annually through Supplementary Valuation Roll (SVR). The taxes include property taxes (e.g. city rates) and income tax on property which are rented out. The assessment of land tax is based on market prices. However there is a difference in values between recorded values and market prices across different users and types of users. Most people have no access to the valuation roll because it is centrally kept by the local authorities. There is low compliance by property holders in paying taxes resulting in high cost in tax collection.

All information in the public land inventory is only available for very few public properties. Land information including that of public land is not publicly accessible and most public land is not properly surveyed and surrounding communities do not know boundaries of public land except when there is a dispute. Key information for concessions such as the locality and area of the concession, the parties involved and the financial terms of the concession, is recorded or partially recorded but is not publicly accessible. The land services that are provided are land administration and land management. Land registry is not financially viable and cannot sustain itself. Currently there are low levels of investment in the registry in terms of capital, human and equipment.

The government of Malawi has taken about 31 years to effect changes in the physical planning system in order to make it responsive to emerging issues in the sector, following the need for decentralisation and good land governance. Some notable aspects of the planning system which have been revised are as follows; land use planning process, land use control and development permitting regimes and service delivery. However, these changes will not achieve the intended objectives if the structural issues, such as inadequate capacity and lack of political will which have dominated the planning profession over the years are not addressed. For example the unwanted land use outcomes such as informal settlements and the development of environmental sensitive areas, particularly by the urban poor, will persist.

Over the years, Malawi has developed a comprehensive Legal and institutional framework aimed at regulating and providing sound land governance in the land sector. New land related Acts of parliament have just been approved, gazetted and assented by the President. Despite the new and old regulatory framework, there is limited or lack of enforcement of these laws, which impact negatively on the administration and management of land. The major challenges in Malawi include the construction of infrastructure on road reserves and encroachment on public land. In addition there are several illegal developments on road reserves such as cultivation which promote siltation of water storm drainage.

Land governance in Malawi is still centralised despite adopting the decentralisation policy. This results in delayed delivery of land services. The Decentralisation Policy in Malawi proposes the devolution of administrative and political authority to the district level to ensure faster and easier access to services. The new Customary Land Act of 2016 is wholly designed on decentralised land administration system.

The centralised system of land registration currently in force is associated with a number of administrative steps, costs and time that is required to register public land in cities and districts and customary land in districts. This discourages many people from conforming to official norms and is a source of corruption. Although the Customary Land Act of 2016 has proposed a new structure of land administration, it has not clarified the exact procedures and processes of land registration. Corrupt practices in Malawi have been fuelled by the complexities of the land registration. The applicants end up bribing the land officers to speed up the process. Additionally,



communities may encroach on public and customary land due the delays in the land registration process.

Section 28 of the Malawi Constitution of 1994 has provided for rights to property, ensuring that any person can acquire property independently or in association with others. Although the Constitution has provisions for the need to incorporate access to land for all, there has not been much attention to specific provisions for promoting gender in the new land legislation. What is new in the new Acts is the introduction of the Land Committees, Customary Land Tribunals and District Land Tribunals. The Customary Land Act 2016 has given the responsibility for customary land governance to an elected body based on western democratic principles without following customary norms. The Act does not require this land committee to administer customary land in accordance with customary law.

Political interference in land delivery has negatively affected land governance in Malawi. Land sector institutions have failed to perform their duties due to political interference. Legally instituted organs from these institutions have been overridden by political imposition through influential positions in the political machinery. During land allocation, political interference plays a part where deliberate conditions are set to benefit individuals in the ruling government.

In Malawi, lack of transparency and efficiency in the land management and administration processes is increasing corruption practices. Corruption is occurring in land allocating offices such that public officials (civil servants) will allocate the land based on other criteria's like how much money the officers will get if they allocate the land to that particular person. Corruption has serious effects, including denying community benefits from the sustainable management of land resources and mismanagement of land.

Lack of land information in Malawi negatively impacts proper land management. The poor majority in urban areas cannot afford to follow the formal land acquisition process and develop land through a legally accepted means. Informal settlements arise when people build on land they have no legal tenure to or by not conforming to planning, registration and or the building regulations of the respective in which they are located. These informal settlements are generally located in peri-urban environments and are characterized by very poor infrastructure.

Information on land is a very important asset as it helps in land governance issues. A complete database on land is essential as it provides a basis for making land governance decisions based on what exists on the ground, which depends on existence of a comprehensive land information management system. Currently, Malawi lacks this comprehensive land information management system in which information on various themes such as soil type, weather, crop and animal husbandry, geology and demography are deposited at one point for public access. Ministry of Lands stalled. Availability of skilled workforce to digitize the land information is also another challenge.

Table of Contents

| | |
|---|------|
| List of acronyms and abbreviations..... | vii |
| List of Figures..... | viii |
| 1. Background..... | 1 |
| 2. Institutional Framework on Land Governance and Administration in Malawi..... | 4 |
| 2.1 Clarity of Institutional Mandates | 5 |
| 2.2 The responsibilities of the ministries and agencies dealing with land..... | 10 |
| 2.3 Administrative overlap in the Ministry of Lands Housing and Urban Development | 10 |
| 3 Legal Framework on Land Tenure in Malawi..... | 11 |
| 3.1 Classification of Land in Malawi..... | 11 |
| 3.2 Land Registration Systems in Malawi | 14 |
| 3.3 Land Registration System from 2016 onwards | 21 |
| 3.4 Land Registration Process in Malawi | 27 |
| 4 Land dispute resolution | 32 |
| 4.1 Assignment of Responsibility | 32 |
| 4.2 Efficiency of conflict resolution..... | 35 |
| 5 Valuation and taxation of land: principles and processes | 37 |
| 5.1 Principles and Processes for different types of valuations and taxation | 37 |
| 5.2 Public availability of valuation rolls..... | 38 |
| 5.3 Transparency and efficiency land/property taxes collection..... | 38 |
| 6 Land use Planning and Control | 39 |
| 6.1 Land use planning framework and process | 39 |
| 6.2 Delivery of services | 40 |
| 6.3 Development permits | 42 |
| 6.4 Land Use Control..... | 43 |
| 6.5 Climate change and environmental management..... | 43 |
| 7 Management of public land | 44 |
| 8 Land information | 48 |



| | | |
|------|---|----|
| 8.1 | Public Provision of land information..... | 48 |
| 8.2 | Land administration services | 48 |
| 9 | Land Governance Key Challenges in Malawi | 51 |
| 9.1 | Land Laws in Malawi | 51 |
| 9.3 | Land Registration | 51 |
| 9.4 | Security of Tenure..... | 52 |
| 9.5 | Inequalities in land access for women and vulnerable groups | 52 |
| 9.6 | Public Land Management | 53 |
| 9.6 | Corruption in Land Acquisition | 53 |
| 9.8 | Land Information Management..... | 54 |
| 9.9 | Lack of a Comprehensive Land Profile in Malawi..... | 54 |
| 9.10 | Accessibility of Land Registration Information..... | 55 |
| 9.11 | Overlapping Responsibilities | 55 |
| | References for Section A | 55 |
| | References for Section B | 56 |
| | Some Land Related Laws consulted | 56 |



List of acronyms and abbreviations

| | |
|------------|--|
| ADL | Airports Development Limited |
| B.C. | Before Christ |
| CAP | Chapter |
| EF | Extended Family |
| ESCOM | Electricity Supply Corporation of Malawi |
| FH | Family Head |
| GDP | Gross Domestic Produce |
| GVH | Group Village Head |
| MASAF | Malawi Social Action Fund |
| MGDS | Malawi Growth and Development Strategy |
| MHC | Malawi Housing Corporation |
| MLHUD | Ministry of Lands, Housing and Urban Development |
| MPICO | Malawi Property Investment Company |
| MASAF | Malawi Social Action Fund |
| NGO | Non-governmental Organization |
| NSO | National Statistical Office |
| PPP | Purchasing Power Parity |
| QVR | Quinquennial Valuation Roll |
| SVR | Supplementary Valuation Roll |
| TA | Traditional Authority |
| THA | Traditional Housing Area |
| TLMA | Traditional Land Management Areas |
| UNECE | United Nations Economics Commission for Europe |
| UN-Habitat | United Nations Human Settlement Programme |
| VH | Village Head |



List of Tables

| | |
|--|----|
| Table 1: Malawi in Figures | 3 |
| Table 2: Land Categories in Malawi..... | 3 |
| Table 3: Institutional Mandates..... | 8 |
| Table 4: Tenure Typologies in Malawi | 16 |
| Table 5: Summary of Land cases at High Court | 36 |
| Table 6: Process of Land Allocation | 46 |

List of Figures

| | |
|---|----|
| Figure 1: Traditional authority land administration structure..... | 5 |
| Figure 2: Main institutions, their responsibilities and separation of functions..... | 6 |
| Figure 3: Actors in Land Management..... | 7 |
| Figure 4: Customary Land Governance Structure under the Customary Land Act of 2016..... | 25 |
| Figure 5: Land Allocation Process | 28 |

1. Background

Malawi is a landlocked country and it is located in southeast Africa. It is surrounded by Mozambique, Zambia, and Tanzania. About a third of the country is occupied by Lake Malawi, formerly Lake Nyasa. The country lies in the Great Rift Valley, which is flanked by mountain ranges and high plateau areas and traverses Malawi from north to south. Lake Malawi lies in deep trough of the Rift Valley. The Shire River flows from the southern end of the lake and joins the Zambezi River 400 kilometres farther south in Mozambique. In the west the land forms high plateaus, generally between 900 metres and 1,200 metres above sea level. In the north, the Nyika Uplands rise as high as 2,600 metres. To the east of the Shire River the land rises to an elevation of 1,600 metres, and eventually to the country's highest point, Sapitwa Peak at 3,003 metres near the Mozambique border. In the extreme south, the elevation is just slightly above sea level. It is there that Malawi's lowest point sits at the junction of the Shire River and the border of Mozambique, 37 metres above sea level.

Early human inhabitants of Malawi date to 8000–2000 B.C. and were nomadic. Land use was characterised by conquest. Later, Bantu-speaking peoples migrated there between the 1st and 4th centuries A.D. This was followed by slave trade that took place in the 18th and 19th centuries. The explorations in the 1850s and 1860s by David Livingstone in the Southern Africa prompted the western missionaries to introduce Christianity in the country.

The boundaries of Nyasaland (now Malawi) were decided at the Berlin Conference of 1884. By 1891 Britain annexed the Nyasaland territory and made it a protectorate in 1892. Between 1951 and 1953, Britain combined Nyasaland with the colonies of Northern and Southern Rhodesia to form a federation. The Federation of Rhodesia and Nyasaland was resisted by Dr. Hastings Kamuzu Banda who led Nyasaland to independence in 1964.

During the colonial rule land was categorised as Crown land, Private under Certificate of Claim and Native Trust Land. At independence in 1964, Malawi's land was designated as under public, private, or customary ownership. The private land, often acquired in the colonial era through alienation of customary land, was used for large-scale production of export crops, such as tea and tobacco. These "estates" became the property of the Malawian elite, and throughout the 30-year tenure of Malawi's first president, Kamuzu Banda, production continued much as it had under colonial rule.

By 2000, it was estimated that more than 55 % of small farm families had less than one cultivable hectare. Following democratic elections in 1994, the government took the first steps toward addressing the increasingly inequitable land situation and established a Presidential Commission of Inquiry on Land Reform. The Commission was tasked with establishing the principles for a new land policy that would be more economically efficient, environmentally sustainable (as much of the estate land was not fully used, and overused small farms were experiencing land degradation), and socially equitable. The Commission's findings were used to form a new Land Policy of 2002 (Malawi Government, 2002) This policy has gone through the process of becoming a Land Bill of 2012. The Land Bill has been submitted to parliament three times and parliament



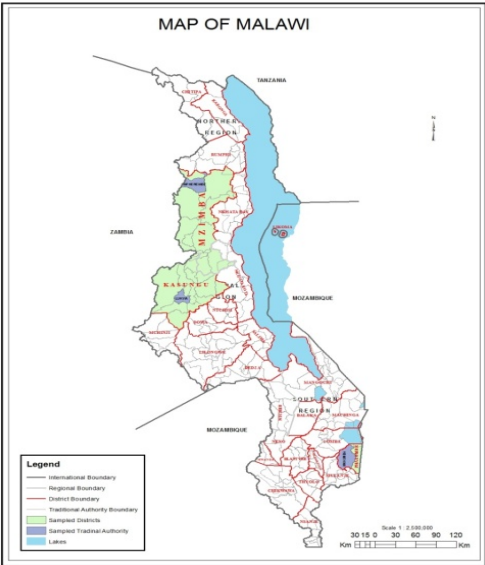
has passed it three times under different political administrations. In 2012 it was passed by Malawi Parliament but the President (Bingu wa Mutharika) refused to assent. In 2014 the Bill was also passed by Parliament but the President (Joyce Banda) refused to assent. In 2016 the Bill was sent back to Parliament and it was passed and the President (Peter Mutharika) finally assented the Land Bill in 2016 and has been gazetted in 2017. This Land Bill includes Physical Planning Bill 2016, Land Survey Bill 2016, Customary Land Bill 2016, Registered Land (Amendment) Bill 2016, Land Acquisitions (Amendment) Bill 2016, Malawi Housing Corporation (Amendment) Bill 2016, Local Government (Amendment) Bill 2016, Mines and Mineral (Amendment) Bill 2016, Forestry (Amendment) Bill 2016, Public Roads (Amendment) Bill 2016.

According to Jere (2012) the land sector in 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. These challenges are described and assessed in more detail in Section 9 of this report.

Recent figures reveal that Malawi has an estimated population of 19 million people, which comprises 81% of the population as rural and 19% of the population as urban. This makes Malawi as one of the most densely populated countries in Southern Africa. According to the National Statistical Office (NSO) (2008) the population density has increased from 59 persons per square kilometre in 1977, to 105 persons per square kilometre in 1998 and rose to 139 persons per square kilometre in 2008 (Malawi Government, 2009).

Malawi is divided into three regions (South, Central and North). The population density varies from region to region. Southern region has the highest followed by the central region with northern as the lowest. Malawi's total land area is 94,100 square kilometres (Table 1). The distribution of land is highly skewed with an estimated 44% of Malawi's land being suitable customary land and another 22 % being unsuitable customary land. According to (Jere, 2012) 19 % of the land is public and 12% of the land is estate land (Table 2).

Table 1: Malawi in Figures

| | | |
|--------------------|-------------------------|--|
| Land Area | 94,080 km ² |  <p>Map 1: Sampled Pilot areas for CLA of 2016</p> |
| Water Area | 24,404 km ² | |
| Total Area | 118,484 km ² | |
| Population | 18,570,321 | |
| Population Density | 197.39/km ² | |
| Government Type | Presidential Republic | |
| GDP (PPP) | \$21.20 Billion | |
| GDP Per Capita | 1,100\$ | |

Source: <https://www.worldatlas.com/webimage/countrys/africa/malawi/mwland.htm>

Table 2: Land Categories in Malawi

| Category of Land | Percentage |
|---------------------------|------------------------------|
| Suitable Customary Land | 44 |
| Unsuitable Customary Land | 22 |
| Public Land | 19 |
| Estate Land | 12 |
| Urban Land | 3 |
| Total Land | 100 – 94.080 km ² |

2. Institutional Framework on Land Governance and Administration in Malawi

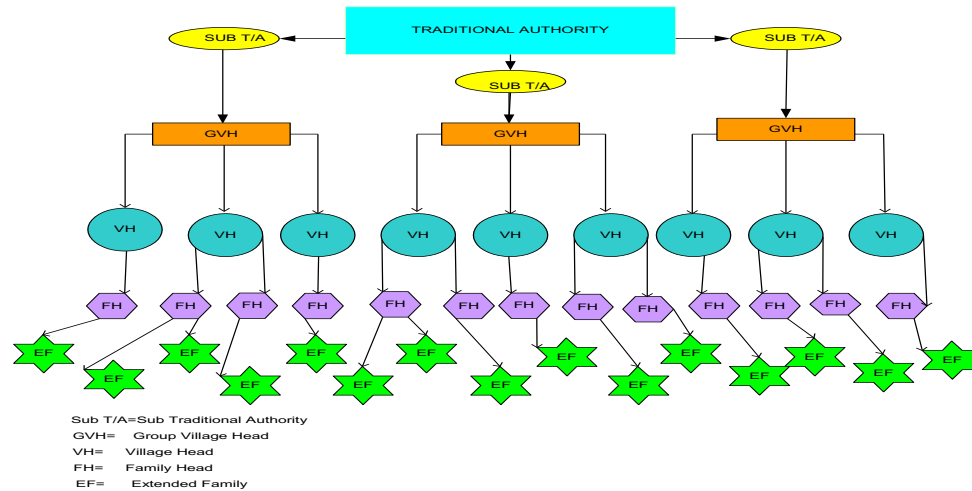
Land in Malawi was administered based on tribal groupings before the arrival of Europeans. These groupings controlled land use through the ability to defend such land from invaders. By 1880's, Europeans started arriving in Malawi. Most of these were entrepreneurs who were later followed by missionaries and farmers. By this time, tribal groupings had started practising settled or subsistence farming. The population of the tribal groupings was small and hence, the Europeans acquired vast tracts of land especially in the Shire Highlands. The Scramble for Africa of 1884, followed by the declaration of Nyasaland (now Malawi) by the British as a British Protectorate in 1891, marked the beginning of the introduction of the British Legal System including land management and administration. Apparently, there existed traditional models of land administration (see Figure 1) which created conflicts between the western land tenure systems and the customary land tenure systems.

Land problem have always rocked Malawi starting from the pre-colonial, colonial and after independence in 1964 where issues of customary land continued to create tensions in the administration of land in Malawi until 1964 when the country gained political independence. During the one party system of government, the politicians saw it necessary to review the colonial land administration and management systems. This review resulted in the formulation of Land Act of 1965 and other associated laws.

Attempts have been made to resolve land issues as follows: 1920 Land Commission, 1938 Bell Commission, 1946 Abraham Commission of Inquiry and 1999 Presidential Commission of Inquiry on Land Policy Reform. This 1999 commission of inquiry culminated into the formulation of the Land Policy of 2002 through a consultative process. However, the approval of the Land Policy was criticized by NGOs, Civil Societies, and traditional leaders, especially on how the policy proposed the administration of customary land and the omission of gender issues. The Land Bill of 2016 has resulted in the amendment of several land related laws, while others have been repealed and one new act introduced; the Customary Land Act of 2016.

Despite the changes in legislation over time, land management and administration functions are at three levels in Malawi. These include Central Government under the Ministry of Lands, Housing and Urban Development, Local Government under City, Town, Municipal and District councils and Malawi Housing Corporation. At local level, land was administered by traditional leaders (see Figure 1) until the Customary Land Act of 2016, which has removed their powers .

Figure 1: Traditional authority land administration structure



Source: Authors, 2019

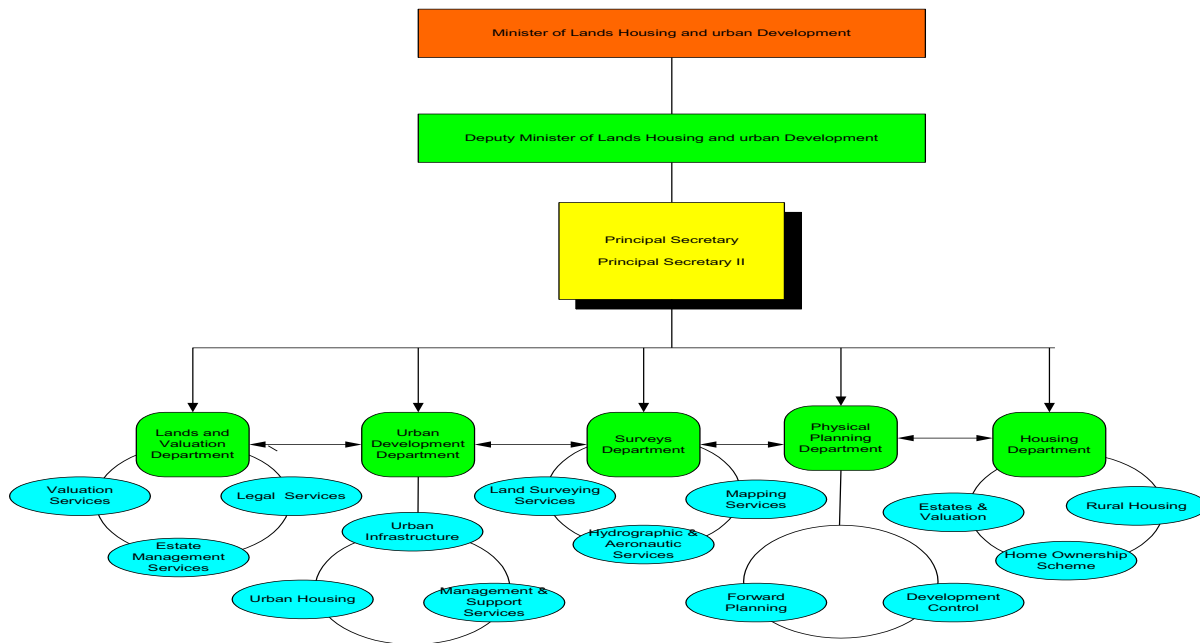
The Ministry of Lands, Housing and Urban Development comprises of the following technical departments; Lands and Valuation, Housing, Physical Planning, Surveys, and Urban Development. All these departments are governed by the National Land Policy which they implement. Lands and Valuation department provide valuation, Estate Management and Legal services, Housing department provide estate and valuation, rural housing and home ownership schemes services, Urban Development department provide urban infrastructure, urban housing and management and support services, Surveys department provide land surveying, hydrographic and aeronautic and mapping services and finally Physical Planning department provide forward planning and development control services (Figure 2).

2.1 Clarity of Institutional Mandates

In terms of institutional mandates, the institutions are designed in such a way that there should be separation of roles for policy formulation, implementation of policy and the arbitration of any disputes (see Table 3). Currently, the Ministry of Lands, Housing and Urban Development is responsible for policy formulation and implementation. It has been advocated that the ministry must be responsible for policy formulation only.



Figure 2: Main institutions, their responsibilities and separation of functions.



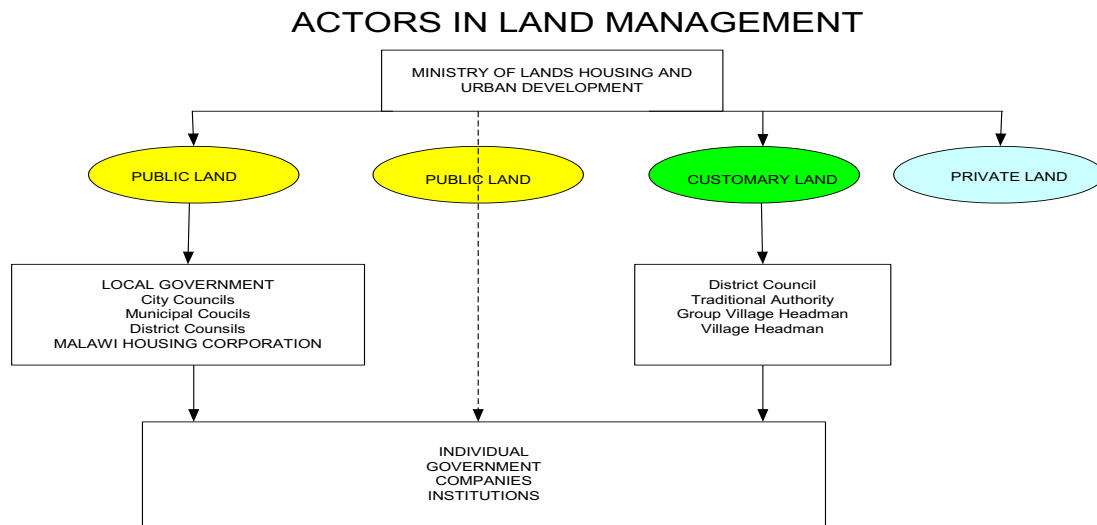
Source: Authors, 2019

The local authorities are responsible for implementing the land related policies at local level. These include city, municipal, town and district councils. Note that local authorities are governed by the decentralization policy which has been harmonised with the new land related acts. It is expected that all land administration and management roles will soon be decentralised.

Apart from the Ministry of Lands, Housing and Urban Development, there are other government ministries and agencies involved in land administration and management. These include Ministries of Agriculture, Irrigation and Water Development, Transport and Public Works, Natural Resources, Energy and Environment and Tourism, Parks and Wildlife. Sometimes there are cases on overlapping roles and conflicting policy provisions between these Ministries and the Ministry of Lands. Despite the conflicting policy provisions, the Ministry of Lands, Housing and Urban Development is the custodian of land governance issues in Malawi. MLHUD devolves land governance and management to various actors as shown in Figure 3.



Figure 3: Actors in Land Management



Source: Authors(2019)

Table 3: Institutional Mandates

| Land Related Institution | Type of Land | Mandate | Separation of Functions | Overlap with other institutions |
|---|------------------------------|--|---|---|
| Ministry of Lands Housing and Urban Development | All types of Land | <p>Land Administration and regulating land use.</p> <p>Land Act of 2016 -use of land, trespass and encroachment.</p> <p>Customary Land Act of 2016 - rights and interests in customary land including land allocation; aim to promote better land development,</p> <p>Land Survey Act of 2016 - land surveys, licensing and control of land matters,</p> <p>Physical Planning Act of 2016 - subdivision of land outside town planning areas, town and country planning; development control, acquisition of land compensation.</p> | There are some mix-ups between departments where some officers carry out services which are not within their mandate. There are examples of allocation of plots by the Lands officers contrary to the layout plans and in a number of cases plot boundaries crossing features like ESCOM way leaves and rivers. | Overlaps between Ministry of Lands, Malawi Housing Corporation, City, Town and District councils especially in the cases where traditional boundaries are recognized in both entities. In urban areas, councils and agencies such as the Malawi Housing Corporation allocate and manage plots in areas under their control. |
| Local Council City, Municipal, Town and District Councils | Public Land and Private Land | Land Administration, regulating land use, taxation and provision of plots for housing development. | | Overlaps between Ministry of Lands, Malawi housing Corporation, City, Town and District councils especially in the cases where traditional boundaries are recognized in both entities. In urban areas, |

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| | | | | |
|--|--------------|---|--|---|
| | | | | Councils and agencies such as the Malawi Housing Corporation allocate and manage plots in areas under their control |
| Parastatals/Private MHC Airports Development Limited (ADL) MPICO Press Properties Other property developers | Private land | Housing market Issuance of leases for Housing/property development Leasing out developed properties | | On some land where ownership is unclear with the councils, especially on squatted customary and idle public land |

Source: Adapted from Jere(2012)



2.2 The responsibilities of the ministries and agencies dealing with land

The land related acts provide the mandated responsibilities of the various authorities dealing with land administration. However, institutional overlap exists with other institutions in the land sector. Overlaps are there because of inconsistencies in several policies that touch on land. Some of the notable policies include Land Use and Management Policy, Land Policy, Mining Policy, Forestry Policy and National Parks Policy. According to Jere (2012), private institutions and statutory agencies dealing with land sometimes result in confusion over jurisdiction and inadequate policy intervention.

2.3 Administrative overlap in the Ministry of Lands Housing and Urban Development

The Ministry of Lands, Housing and Urban Development has a clear division of land-related responsibilities between the different levels of administration and governance. The Decentralisation Policy has spelt out clear responsibilities from central government to local authorities down to community levels. However, there are some institutional overlaps between central government and city, municipal, town and district councils. In the peri-urban areas there are overlaps in land administration. However, the new Customary Land Act of 2016 provides the solution to issues of customary land versus customary estate. According Customary Land Act of 2016, all land will be divided into Traditional Land Management Area (TLMA) which will have a Certificate of Customary Land in a prescribed form. This will be at a Traditional Authority Level. At Group Village Headman Level, there shall be Customary Land Committee, which will, on trust of residents, manage land. Figure 4 shows traditional land management structure under Customary Land Act of 2016.

3 Legal Framework on Land Tenure in Malawi

In Malawi land was held communally (West, 1976) before and even during the colonial rule. Land was acquired, accessed and allocated using customary laws. The different tribes that exist in Malawi result in customs that vary from one region to another. Authority to allocate land was vested in the leader of the community, who in turn allocated the land to the head of a family. This means that land in the customary system could be inherited. Note that inheritance of land depends on whether a matrilineal or patrilineal system is followed in the area.

Once an individual member of the family has been allocated a piece of land, they have the right to use and exclude all others from using that piece of land. These two rights are only applicable if the land is continually being used by the individual concerned and as long as the individual remained a member of the family which allocated the land to him.

In Malawi, the country is divided into 28 administrative districts (Map 1). Each district is further divided into areas which are controlled by traditional authorities. Each traditional authority is further divided into group village headmen who control a number of villages which are controlled by village headmen. Under the village headmen are family leaders. A village headman may also be a leader of his family. Under the family, there is the individual, who has rights over the land. Before the passing of the Customary Land Act of 2016, allocation of land has been at family level because most of land in Malawi is already under the jurisdiction of family members.

During colonial days, Malawi had registration of deeds. A deeds registry has existed in Malawi from the early days of the British administration and is currently governed by the Deeds Registration Act of 1916 (CAP. 58:02). Using this system, more than 52,000 deeds have been registered. The registration of deeds only provides a public record of documents relating to land, but it does not cure any defects in the instrument or confer validity which it would not otherwise have. There is no certainty that the person named as owner in a particular registered document is, in fact, the owner of the interest in the land in question. It should be noted that the descriptions of land in the deeds are not precise and, it is not possible to relate the descriptions to the ground with certainty. These disadvantages were also noted in the English Land Law.

3.1 Classification of Land in Malawi

Land Classification during the Colonial Era

Land administration during the colonial era was based on the British legislation. For example, as early as 1892, African Orders in Council legislation was formulated whose main aim was to facilitate the acquisition and granting of land rights in the name of the British Crown. The 1892 African Order in Council mandated the appointment of a Commissioner for British Central Africa who was to grant land rights in the territory. In 1894, land survey regulations were formulated whose aim was to empower a land surveyor to deal with all urban land management. In 1896, the Land Sales Regulations were formulated that stated the manner in which land could be

purchased or leased. These regulations required accurate definition of the estimated acreage of the plot, and had to be accompanied by a sketch plan endorsed and certified by a government surveyor. The sketch plan was an interim measure that required a proper survey to be done subsequently. In 1898, Africa (Acquisition of Lands) Order in Council was enacted which was followed by the 1902 Nyasaland Order in Council. The aim of these orders was to mandate the courts in Malawi to adopt the British Common Law and doctrines of equity as practiced in England.

The settlers acquired land through the use of Certificate of Claim. Land Ordinance (Native Locations) was passed in 1904 with the intention of protecting African tenants on alienated land. This Ordinance could not be implemented because of the influx of migrants from Mozambique to the Shire Highlands. In 1907, another Nyasaland Order in Council was enacted which gave powers to the Commissioner to grant and acquire land in the name of the Queen of England. In 1927 a Native Trust Lands Board Ordinance was enacted which gazetted certain areas as Crown Lands for the Settlement of Natives. By 1936, the Native Trust Land Order in Council divided Nyasaland into Crown Land, Reserved Lands(townships, forest reserves and land already alienated) and Native Trust Land, which included land previously been designated as Crown Land. The Native Trust Land was vested in the Secretary of State to be administered for the benefit of the native inhabitants.

In 1948, the colonial government set up a Land Planning Committee to look into the question of land acquisition for the African resettlement. This committee recommended that government should re-acquire large tracts of land which were undeveloped or occupied by large numbers of African residents or tenants. In 1950 the Nyasaland (Africa Trust Land) Order in Council was enacted, which categorized the three different types of land as private, public and African Trust Land. By 1952, the Africans on Private Estates Ordinance was enacted whose aim was to extinguish claims arising from historical land occupancy. The Ordinance also provided that the presence of all resident Africans on estates was to be legalised and that every African resident be registered and be entitled to that extent of cultivatable land already under crops. This Ordinance enabled government to acquire large amount of land. The total percentage of freehold land changed from 15 per cent in 1890s to about 4 per cent in the 1950s. In 1960 the colonial government introduced a legal provision for property to be inherited also in accordance with the canons of customary law. In 1962 all Africans residing on private estates were accorded the status of residents through registration. Most of the land that is under freehold tenure now was acquired using the Certificate of Claim. The native's reserves were later changed to African Trust Land.

Land Classification from 1964 to 2016

Just after attaining political independence in 1964 several land acts were enacted which were modelled on British Colonial experience in East Africa. On 2nd April 1965 a Malawi Land Bill was introduced which recognised that land was the country's greatest economic asset. The purpose

of this legislation was to ensure government control over all the three categories of land that were introduced in the interest of planned and orderly development. Some of the formulated acts included the Land Act of 1965. In this act, land was divided into three categories, namely; Customary Land, Public Land and Private Land. Private land could either be freehold or leasehold. What was African Trust Land during the colonial era was called customary land, while Crown land was called public land.

Customary Land

The Land Act CAP 57:01 of 1965 defines customary land as all land which is held, occupied or used under Customary Law but does not include any public land. Section 25 of the act, provided that all customary land is declared to be the lawful and undoubted property of the people of Malawi and is vested in perpetuity in the President. According to the act, the president was a trustee as far as matters concerning customary land was concerned. The fact the president was a trustee of all customary land implies that the government had powers to control it. However, the powers of the Minister responsible for land matters over customary land are limited by Section 5 of the Land Act, which provided that the minister could not grant a lease for customary land for an estate for a period longer than 99 years. The Land Act also empowered the Minister responsible for land matters to convert any customary land to become public land by an order published in the Gazette. Using section 27 of the Land Act, government acquired more customary land for such public utilities. Section 31 of the Land Act of 1965 gives the government powers over the use of customary land by making control orders. This enabled government to implement several developmental projects and schemes throughout the country for the benefit of communities for example agricultural development schemes.

Public Land

The Land Act of 1965 defines public land as all land which is occupied, used, or acquired by the Government and any other land that is not customary land or private land. This land include any land which reverts to Government on the termination, surrender, or falling-in of any freehold or leasehold title under which it is held and any land which was, immediately before the coming into operation of the Act, public land within the meaning of earlier legislation.

According to the Act, land became public if any customary land was acquired by an individual and the individual decided to surrender the lease to government. If the land has been leased, on the termination of that lease, the land cannot be said to be customary land because it reverts to Government. Such land can only revert to customary status by invoking the provisions of Section 29 of the Land Act.

Land could also become public using Land Acquisition Act CAP 58:01 which empowered the minister to acquire any land required for any public purpose (subject to payment of compensation) for an estate in fee simple or for a term of years. Additionally, land could become public using Section 14 of Land Act of 1965 which empowered the Minister to re-enter any

private land on the breach or non-observance by a lessee of any of the covenants or conditions contained or implied in his lease.

Private Land

Private Land is defined by the Land Act CAP 57:01 of 1965 as all land which is owned, held, or occupied under a freehold title, a leasehold title, or a certificate of claim, or which is registered as private land under the Registered Land Act. Leaseholds in Malawi are for limited period and range from 21 years for agricultural leases to 99 years for residential leases. Note that any person who has leasehold enjoys all the privileges of a freeholder provided that covenants stipulated in the instrument are not contravened.

Freehold title has its origins from the land acquisitions by the European settlers in 1870s. Most of the land was held under a certificate of claim. The first of such claims was registered in 1892. Claims continued to be registered whose consequence was to vest freehold title in the holder. When Sir Harry Johnston became the first Governor of the country, he continued issuing such claims under the powers conferred upon him by the provisions of the Africa Order-in-Council, 1889. Under the same law, the governor had powers to assume control over any land for use by the Crown, whom the governor represented. Table 4 on the next page shows the land tenure typologies.

3.2 Land Registration Systems in Malawi

Land Registration System 1964 to 2016

There are three types of land registration systems namely; private conveyancing, deeds registration and title registration. In Malawi the deeds registration system is based on the Deeds Registration Act of 1916. Currently, Malawi uses both private conveyancing system, a deeds registration system and a title registration system. The title registration system is decentralized to the district level but only operates in very limited areas. The title registration system was introduced in Malawi after the passing of the Registered Land Act in 1967 (Malawi Government, 1967). Its main purpose is to record land ownership. The unit of property is registered and ownership identified. It is usually based on a parcel of land precisely defined as a unit to give permanence of the record. Title registration is the recording or registering of ownership to land or any other interests that may be created over the land.

Title registration system is operational in the cities of Lilongwe, Blantyre, Mzuzu, and Zomba as well as Karonga Municipal council and a limited part of rural area in Lilongwe District. The system is based on a typical titles register with three sections: the *property section describing* the parcel (including the reference to the associated plan), the *proprietary section* containing the name of the right holders and a *charges/encumbrances section*. The register contains a page for each parcel of land that is registered, making it parcel-based as opposed to the person-based deeds system. Once a parcel or property is on the register, the title-holder can be simply ascertained



since the name(s) will be reflected on the front side of the relevant register page. This avoids the tedious “chain of title” search characteristics of a deeds system. When a parcel is subdivided new register pages are prepared for the new parcels and the reminder and new parcel numbers are allocated to all affected parcels.

Every transaction submitted to the registry is noted in the Application Book. This book establishes the order in which properties were submitted for registration. The registry map is the legal description of the spatial dimension of the parcels in the system. The Registered Lands Act gives the responsibility of preparing and maintaining the Registry Map to the Surveyor General. However, the Act also allows the Registrar to create and maintain the Registry Map if the Surveys Department has not done so, for a particular registration district.

Table 4: Tenure Typologies in Malawi

| Tenure Type | Area and Population | Legal Recognition & Characteristics | Overlaps & Potential Issues |
|----------------|---|---|--|
| Public Land | Total public land was 21 percent of total land area in 1998. However, not all the public land was suitable for cultivation. | <p><i>Legal recognition:</i> Land Act of 2016</p> <p><i>Registration:</i> public land is registered at land registry and documented by the Government.</p> <p><i>Transferability:</i> The land is transferable from Government to communities or individuals. There are cases of irrigation schemes, forested areas transferred to management of communities but still under Government custodianship</p> | As defined in the Land Act of 2016 public land include government land and unallocated customary land. This land now is vested in the Malawi Republic not the President as in the Malawian Constitution. |
| Private Land | This accounts for between 10 – 15 percent of land in Malawi | <p><i>Legal recognition:</i> Land Act(2016), Registered Land Act (2016), Customary Land Act(2016)</p> <p><i>Registration:</i> This land is registered at land registry as freehold or leasehold and customary estate</p> <p><i>Transferability:</i> Transfer of lease and assigning of private land needs notice to the Minister.</p> | |
| Customary Land | Total customary land was 65 percent of total land area in 1998 | <p><i>Legal recognition:</i> Customary Land Act (2016).</p> <p><i>Registration:</i> The Customary Land Act (2016) has provided for registration as customary estate with full legal recognition. The Land Clerk will register the land at TA level</p> <p><i>Transferability:</i> Transfer of lease and assigning of private land needs notice to the Minister.</p> | Although the Land Act (2016) has not defined customary land, there are only two categories of Land namely: Public and Private land. Public land can either be government land or unallocated customary land, while private land can be leasehold, freehold or customary estate. This means that customary land is not one of the categories of land in Malawi. |

| | | | |
|---------------|---|--|---|
| Freehold Land | | <p><i>Legal recognition:</i> The Land Act (2016), Registered(Amendment) Land Act (2016), regulate the use and management of freehold land.</p> <p><i>Registration:</i> The land is registered in the deeds registry.</p> <p><i>Transferability:</i> Most of the freehold estates are held under corporate entities as such a prior notice of sale or transfer should be sought from the minister responsible for land affairs.</p> | <p>Freehold tenure carries the right of exclusivity, use and alienation. Most of the freehold land in rural and urban Malawi is owned/controlled by non indigenous Malawians and such land is situated in prime arable or urban land. Most rural based freehold estates are mostly utilised in growing of tea, coffee, tobacco and macadamia and are key to Malawi's economy. Some of the land was customary land that the government converted to freehold land even before independence in an effort to encourage agricultural development.</p> |
| Leasehold | 28% of rural population engaged in leasehold system | <p><i>Legal recognition:</i> Land Act(2016); Registered(Amendment) Land Act (2016)</p> <p><i>Registration:</i> Registered in the Records Section of Land Registry</p> <p><i>Transferability:</i> Most of the leasehold estates are held by individuals and corporate entities as such a prior notice of sale or transfer should be sought from the responsible landlord.</p> | <p>Malawi has a challenge of Land Registry system at both urban and rural systems. In rural areas, despite having district councils, there is inadequate capacity for estate management leading to incomplete records of leasehold.</p> <p>The approval of the Physical Planning Act of 2016 which makes the whole country a planning area and the passing of the Customary Land Act (2016) will improve the registration of customary land.</p> |

Land Governance in Southern Africa

NUST-NELGA Symposium
Windhoek, Namibia – 3-4 September 2019

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|---|--|--|--|
| Urban leasehold by local councils & government agencies | Total urban in 1998 was 1% of total land | <p><i>Legal recognition:</i> Land Act(2016); Registered(Amendment) Land Act (2016)</p> <p><i>Registration:</i> Registered in the Records Section of Land Registry. Annual ground rents are payable to local councils and government agencies such as Malawi Housing Corporation.</p> <p><i>Transferability:</i> The land is transferable but sale of land requires prior notification by the responsible local council or government agency.</p> | In urban areas, not all areas are registered. Land management and administration is done by several institutions such as the Central Government, the Local Councils, Government Agencies such as Malawi Housing Corporation and sometimes Traditional leaders. This causes confusions in terms of boundaries of jurisdiction for each actor. |
| Estate/leasehold on agricultural land | Total estate leasehold on agriculture land comprised 13% of the total land in 1998 | <p><i>Legal recognition:</i> Land Act(2016); Registered(Amendment) Land Act (2016)</p> <p><i>Registration:</i> Registered in the Records Section of Land Registry. Annual ground rents are payable to local councils and government agencies such as Malawi Housing Corporation</p> <p><i>Transferability:</i> The land is transferable but sale of land requires prior notification by the responsible local council or government agency.</p> | Leasehold on agricultural land originated from the conversion of customary land to private leasehold land with a term of 21 years. Enforcement of covenants on these leases has been problematic. |

A “piece file” is maintained for every parcel of land. This file contains all documents and plans pertaining to a particular parcel, whether this is part of initial registration or subsequent dealings. The name index is an alphabetic listing which cross-references the names of the proprietors of land, leases or charges with the title number. In Malawi, registration of rights to land is done at the Land Registry Office within the Regional Offices of the Ministry of Lands. The Chief Land Registrar manages the registration. The Application Book is kept in the Registry in which a record of applications is kept. A Land Register is kept for every piece required to be registered. The Register shows whether the land is public or private. The piece of land to be registered is identified on the Registry Map, then plotted and title number issued. The title number is recorded in the Land Register together with the plot number and the name of the applicant. A Land or Lease Certificate is issued to the applicant. Any other changes as regards to the ownership are then registered and amended accordingly. The advantage with this system is that ownership is guaranteed by the state i.e. in a case where there is any loss, government is supposed to compensate the individual. It shows the present entries in the register and the present legal position on the ground.

There are three legal instruments that were enacted in Malawi in order to migrate from the deeds registration system to the title registration system. These include the Registered Land Act (CAP 58:01), the Customary Land (Development) Act (CAP 59:01) and the Adjudication of Title Act (CAP 58:05).

The Registered Land Act (CAP. 58:01)

The Registered Land Act was enacted in 1967 and was amended by the Registered Land (Amendment) Act of 1970 and the Adjudication of Title Act 1971. It established a complete code of property law, which provides security and proof of title, and the creation and transfer of interest in land. It provides the substantive law needed for land dealing. This replaces the archaic and often complicated provisions of the English land law applicable to unregistered land. According to Section 24 of the Registered Land Act, the registration of a person as a proprietor confers on him the rights of ownership of that land as private land. The act ensures that the register is at all times the final authority and the State accepts responsibility for the validity of transactions.

The Registered Land Act became operational in 1972 when the first land registry was opened in Lilongwe to deal primarily with land titles in the Lilongwe Land Development Programme area (Malawi Government, 1972). This area covered over a million acres of land held under customary tenure. At the end of 1981, over one quarter of the area was registered under the provisions of the Registered Land Act. In 1974, the application of the act was extended to the capital city area in Lilongwe, where the capital city of Lilongwe land registry was established (Malawi Government, 1974).

Adjudication of Title Act (CAP. 58:05)

The Adjudication of Title Act (CAP. 58:05) was passed in 1971 whose main objective was to provide for the adjudication of rights and interests in land, other than customary land. It was passed mainly to support the Registered Land Act to enable adjudicated titles over land to be entered in the land register.

Customary Land (Development) Act 1967 (CAP. 59:01)

This act was passed to empower the minister responsible for land matters to appointment land committees and provide the functions for such committees especially where adjudication of title on customary has been implemented. The act was meant to emphasise on the development of customary land and gave powers for the redistribution of land that was once managed using the customary law system.

Local Land Boards Act 1967

This act was specifically passed to deal with all land matters arising within the Lilongwe Land Development Programme under the Customary Land Development Act. The act established the board whose main function was to deal with matters such as applications to change the family representative, boundary disputes, complaints about non-authorized cultivation of family land, and inspection of newly completed demarcation maps. It was believed that the act would protect the landowners and also the land from dealings which may adversely affect its use.

Land Policy Reform 1994 - 2016

In 1994, the government of Malawi changed from one party to multiparty system of government. It was observed that Malawi as a country is faced with several challenges including increased demand for land due to rapid population growth, high rate of urbanization, weak institutional capacity for land administration, poor land practices, and limited public awareness of land policies and laws. On 18th March 1996 a Presidential Commission of Inquiry on Land Policy Reform was established. Thirteen commissioners were appointed and gazetted under Government Notice No. 20 of 18th March 1996. The main objective of this commission was to undertake a broad review of land problems throughout Malawi, and recommend the main principles of a new land policy which would foster a more economically efficient, environmentally sustainable and a socially equitable land tenure system.

As the government was formulating policies, it ensured to include land issues in the national development strategy. The Malawi Growth and Development Strategy II (MGDS II) recognised land as a primary factor of production and a source of livelihood for most Malawians. The MGDS II identified the land sector goal as to improve equitable access to land and tenure security, efficient management and administration system, and ecologically balanced use of land and land-based resources. There was also increased recognition that land sector linkages with other sectors such as agriculture, environment, energy and mining as well as tourism is essential to enhance achievement of desired results.

The National Land Policy was formulated through a consultative process and was adopted in 2002. The goal of the National Land Policy in Malawi was to ensure tenure security and equitable access to land, to facilitate the attainment of social harmony and broad based social and economic development through optimum and ecologically balanced use of land and land based resources. The National Land Policy recommended various reforms that need to be undertaken in the land sector. Malawi Land Reform Program Implementation Strategy (MLRPIS) was developed in order to translate the National Land Policy recommendations into actions. However, the MLRPIS was not fully implemented due to lack of supporting legislation for the provisions of the National Land Policy. It must be noted that the National Land Policy was passed with decentralisation of most functions to local councils in mind. However, land administration and management functions are still centralized at Ministry of Lands, Housing and urban Development (MLHUD). It is argued that this is due the fact the legal framework was inadequate to support decentralization process.

In 2016 the following Bills were passed by Parliament: Land Bill 2016, Physical Planning Bill 2016, Land Survey Bill 2016, Customary Land Bill 2016, Registered Land (Amendment) Bill 2016, Land Acquisitions (Amendment) Bill 2016, Malawi Housing Corporation (Amendment) Bill 2016, Local Government (Amendment) Bill 2016, Mines and Mineral (Amendment) Bill 2016, Forestry (Amendment) Bill 2016, Public Roads (Amendment) Bill 2016. This has been seen as the commitment by Government to ensure that the legal framework is in place to enable the implementation of National Land Policy.

3.3 Land Registration System from 2016 onwards

The Land Act of 2016

The purpose of the Land Act of 2016 is to replace the Land Act (CAP. 57:01) in order to harmonize the existing legal framework with the aspirations of the Malawi National Land Policy. The Act was reviewed to address the following inadequacies;

- a) The Land Act of 1965 does not provide for the definition of land;
- b) The Land Act of 1965 divides land into three categories, namely; Public land; Customary land; and Private land.
- c) The old Land Act does not restrict the ownership of land. Any person can own any type of land in Malawi.
- d) The old Land Act vests both public and customary land in the President contrary to the Malawi Constitution which vests all land in the Republic.
- e) The old Land Act 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.

The Land Act of 2016 has introduced four main new provisions such as the definition of land, new categories of land tenure as Public land and Private Land and vesting of all land in perpetuity in the Republic.

Public Land

Public land has been defined as all government land which is privately used by the Government and dedicated to a specified national or public use or made available for private uses at the discretion of Government. Public land also includes all unallocated customary land which is used for the benefit of the community as a whole.

Private Land

The Land Act of 2016 has also categorized customary land into leasehold land and customary estate. The Act has put in place new provisions on transactions on land in Malawi. For example, non citizens are only allowed to be given a lease of less than fifty years unless there are valid reasons for a longer lease. The Act has also included Section 38 (1) that restricts the sale of private land to non citizens. The restriction is to give a Malawian citizen the first option to acquire the land. The malpractice of inflating the purchase price to bar Malawian citizens from purchasing the property will be checked because the new Act has provided that a government valuer should be verifying the published prices before the conclusion of the transaction.

The new Land Act of 2016 has also included a clause on absentee landlordism. In this clause , private land held by non-citizens who are not ordinarily resident in Malawi for a continuous period of two years is supposed to be compulsorily acquired by government if during that period such person has not shown or effected his intention to develop the land or disposal of it or to use or own the land jointly with a citizen or permanent resident of Malawi. This applies to all persons owning private land including persons resident in Malawi.

Customary Land Act of 2016

The Customary Land Act 2016 is a completely new act and its purpose is to replace the Customary Land (Development) Act (CAP.59:01) and the Local Land Board Act (CAP.59:02) which were only applicable in Lilongwe West. The act provides for the management and regulation of customary land. The act has taken into account the system of titling of customary land as advocated by the National Land Policy. The Customary Land Act of 2016 further provides for the creation of committees and tribunals which will be empowered to carry out the function of land allocation, adjudication, management and settlement of customary land disputes. It attempts to address some gaps and inadequacies in the existing laws. For example, the customary land is owned communally which according to western school of thought compromises on land tenure security especially to the most vulnerable members of the community including women. Section 26 of the old Land Act of 1965 also permitted traditional leaders to administer land under delegation of the Minister responsible for land matters. Finally, land disputes were handled at different levels by both the customary system and the through the courts.

The main provisions in the Customary Land Act of 2016 include the creation and registration of customary estates. The customary estate has been defined as any customary land which can be owned, held or occupied as private land within a Traditional Land Management Area and which will be registered as such under the Registered Land Act. The assumption in the act is that an individual, either man or woman will be registered as the owner of the land which in turn can be used to secure a loan from a bank or create a lease or sub-lease. Map 1 shows areas where the Act is currently being piloted in Malawi.

An innovation in the Customary Land Act of 2016 is that it will also allow registration of persons as joint tenants or tenants in common. The advantage of owning property as joint tenants is that when one person dies, the survivor automatically takes over the property without applying for letter of administration which is costly since the person representative will be required to pay estate duty. The Act has also provided for the administration and management of customary land through the formalization of the role of chiefs through land committees and tribunals. The land committees will be gender sensitive land committees. Issues of transparency and accountability in land administration and management will be tackled through election process of the land committees by the community.

The registration and titling of customary estates will follow the community participatory approach whereby the land committee and the community in a Traditional Land Management Area will jointly identify, record land parcel boundaries and land rights of individuals, families and clans before the adjudication of interests.

Unlike the old legal instruments, the Customary Land Act of 2016 has put in place land dispute settlement mechanisms. At Traditional Authority level there shall be a Land Tribunal that will be created to hear and determine land disputes. If the respondents are not satisfied with the ruling, they will be able to consult District Land Tribunal and if they are also not satisfied with the ruling they will have to appeal to the National Land Board. Although certain sections of the population in Malawi are not happy with the passing and gazetting of the Customary Land Act of 2016, it is expected that the Act will provide an enabling environment for improving land governance through decentralized land administration functions and through the creation of land committees and land tribunals. It is also expected that the act will provide social protection and social development including safeguarding the rights of vulnerable groups especially women and children by ensuring equitable access to land, tenure security and sustainable socio-economic development in Malawi.

Customary Land Act 2016 Regulations

The Customary Land Act Regulations of 2016 indicates that the country will be demarcated into Traditional Land Management Areas. Each of this will have a land clerk who will be in charge of formation of a land committee. According to section 8 of the Customary Land Act of 2016, a land clerk will serve as a secretary to the land committee. Apart from this, the land clerk shall carry out survey work in accordance with the Land Survey Act of 2016. He/she shall also be competent



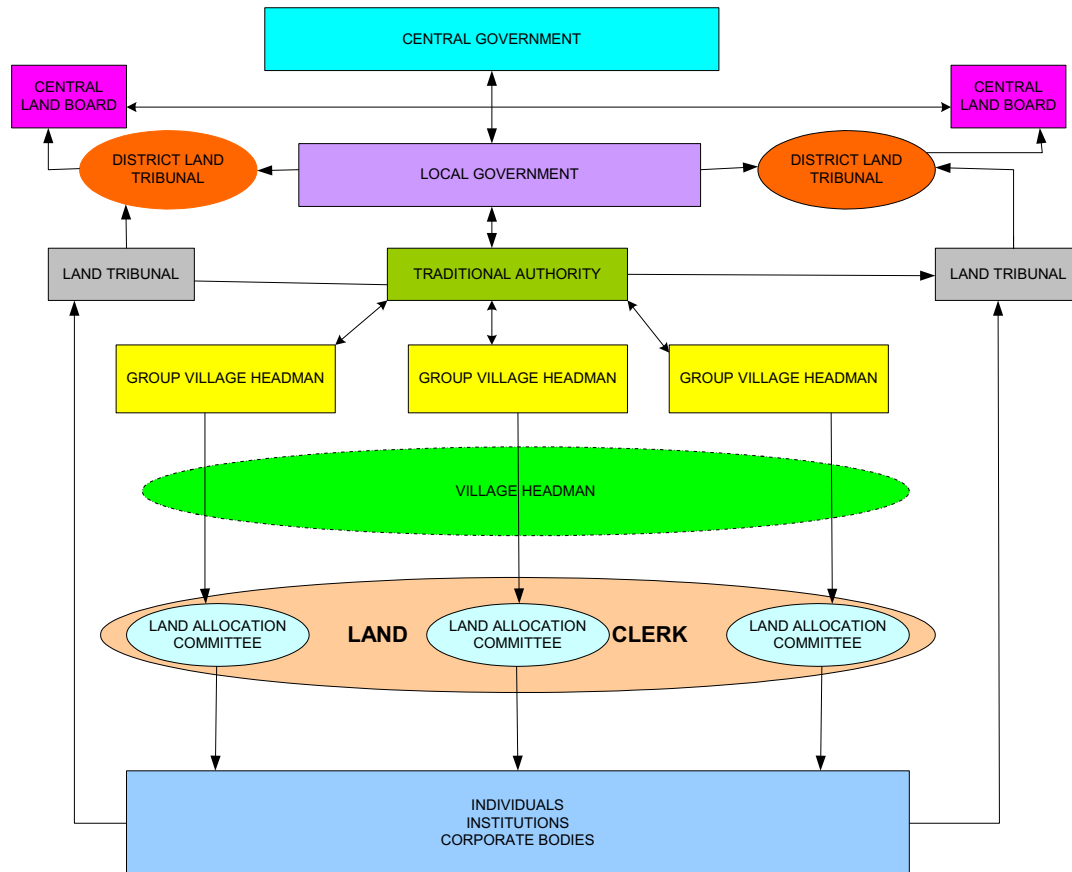
in preparing basic maps for the TLMA, be able to prepare land use plans and provide technical advice on land matters to members of the land committee. The land clerk is an employee of a local government authority who shall have Malawi School Certificate Education (MSCE) with training in land issues. The composition of this committee will be six (3 women and 3 men) who shall be put elected through a secret ballot. The functions of the committee include to clarify rights of occupation and use for customary land by communities within the group village headman area. The committee will also ensure that all other categories of land in the area of jurisdiction are clear and known.

In all the TLMA, all the customary land rights will be adjudicated for purposes of land registration. The grants of customary estate will be subject to consent of the Traditional Authorities (TA). Note that the committee will have powers to prescribe the acreage that individuals or a group of individuals may be allocated. The committee may levy any fees of charges with the consultation with the commissioner for lands in the Ministry of Lands Housing and Urban Development.

The committee will have powers to approve transactions on customary estates for the first five years and also recommend the appointment of staff by the local government. It will be the duty of the District Land Registrar to collect the descriptions of the district, the traditional land management area and group village headman area. The District Land Registrar will also be responsible for managing and maintaining the district maps, TLMA maps while the land clerk will, in liaison with the committee verify the boundaries. The land clerk will then produce a base map and a land use map for each TLMA and group village headman area in accordance with the Land Survey Act 2016 and Physical Planning Act 2016. The maps prepared are needed for the adjudication purposes.



Figure 4: Customary Land Governance Structure under the Customary Land Act of 2016



Source: Authors, 2019

Before any adjudication can take place in a TLMA, the land clerk has to give seven day notice of the intended demarcation and recording of claims. Any person who has interest in land in the area of interest should make claims to the land clerk who shall always work hand in hand with the committee in verification of boundaries of land parcels in the presence of those who are to be affected. If there are any disputes about any boundary, the land clerk shall refer such issues to the Customary Land Tribunal(see Figure.4). After the adjudication record has been prepared the land clerk will give notice of fourteen days for inspection of the adjudication Register.

A Customary Estate is granted to a person after the parcel has been adjudicated based on his/her claims. The applicant needs to fill an 'APPLICATION FOR A CUSTOMARY ESTATE' FORM A and submit it to the land committee. If the committee is satisfied with the claim, the applicant is offered the estate in a prescribed FORM B "OFFER FOR CUSTOMARY ESTATE". In a situation where the committee is not satisfied with claim, the applicant will be informed of the refusal,



citing the grounds of the refusal. The land clerk shall be the custodian of land records within the TLMA.

Registered Land (Amendment) Act of 2016

Registered Land (Amendment) Act of 2016 is an amendment of the existing Act. As outlined above, the old Registered Land Act (CAP. 58:01) has only been applicable in the urban area of Lilongwe City, Blantyre City, Mzuzu City, Zomba City, Kasungu Municipality and Karonga Town. This implies that all land transactions falling outside the operation of the Registered Land Act are registered at the Deeds Registry. This makes Malawi to have a dual system of land registration. Note that the old Registered Land Act does not provide for the creation of District Land Registries since land transactions affecting pieces of land located in the districts are registered at the deeds registry. Additionally, the old Registered Land Act does not provide for the registration of customary land. The amendment of the act will also ensure that the Customary Land Act of 2016 is well catered for.

There are several reasons why there was need to amend the Registered Land Act. For example, the amended act is aimed at extending title registration throughout the country. This will enable Malawi to migrate away from deeds registration and to have only title registration system which is simple and less costly. This, in turn, will enable the registration of titles for all Malawians. The decentralized land management of land will ensure that the whole country has registry maps showing surveyed boundaries of all parcels including Traditional Land Management Areas. It is expected that this will provide an enabling environment for improving land governance through decentralization of the land administration functions.

Land Acquisitions (Amendment) Act of 2016

The Act provides comprehensive provisions on regulation of land acquisition and compensation to reflect the issue of appropriate compensation. The amendments to the Act include measures to ensure transparency in the assessment of fair compensation by setting out clearly the factors to be taken into consideration in assessing compensation, and also appointing an independent valuation surveyor to carry out the assessment. Another pertinent issue the amended Act has tackled is that the old Land Acquisition Act provides that the assessment done by the Minister responsible for land matters is final and his decision is not subject to any appeal to, or to any review by any court. This Act provides that any aggrieved party will have the right to appeal to a court of competent jurisdiction.

Physical Planning Act of 2016

The Act makes provision for orderly and progressive development of land both in urban and rural areas through the preparation of physical development plans to guide the location and development of all types of development projects and programmes. It also makes provision for the granting of permits to develop land and such other powers of control and use of all types of land including customary land in line with the Customary Land Act of 2016. The main departure

with this Act is that it has declared the whole country a planning area. Section 64 of the Act has provided that a vacant land development order should apply to all private land throughout the country and to any person whether residing outside the country or otherwise who unreasonably fails to develop the land.

Land Survey Act of 2016

The Land Survey Act of 2016 elaborates on the powers, duties and composition of the Land Surveyors Registration Board that is supposed to regulate the land surveying profession and practice. It also provides for the surveying techniques of Traditional Land Management Area as provided for under the Customary Land Act of 2016. The Act has also provided that only registered land surveyors should carry out surveys for sketch plans whose plots are to be registered under the Registered Land (Amendment) Act of 2016. Another issue that has been tackled by the new Land Survey Act of 2016 is the use of new technology in map making and the use of modern surveying equipment.

Additional Legislation

Currently, several other land related legislations are to be considered for formulation. These include the Sectional Title Act to provide for title registration of building properties within a property at various height levels, Valuation Act to provide for the regulation of the valuation of property that has been identified for acquisition or disposal and the Resettlement Act to provide for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason, including disasters.

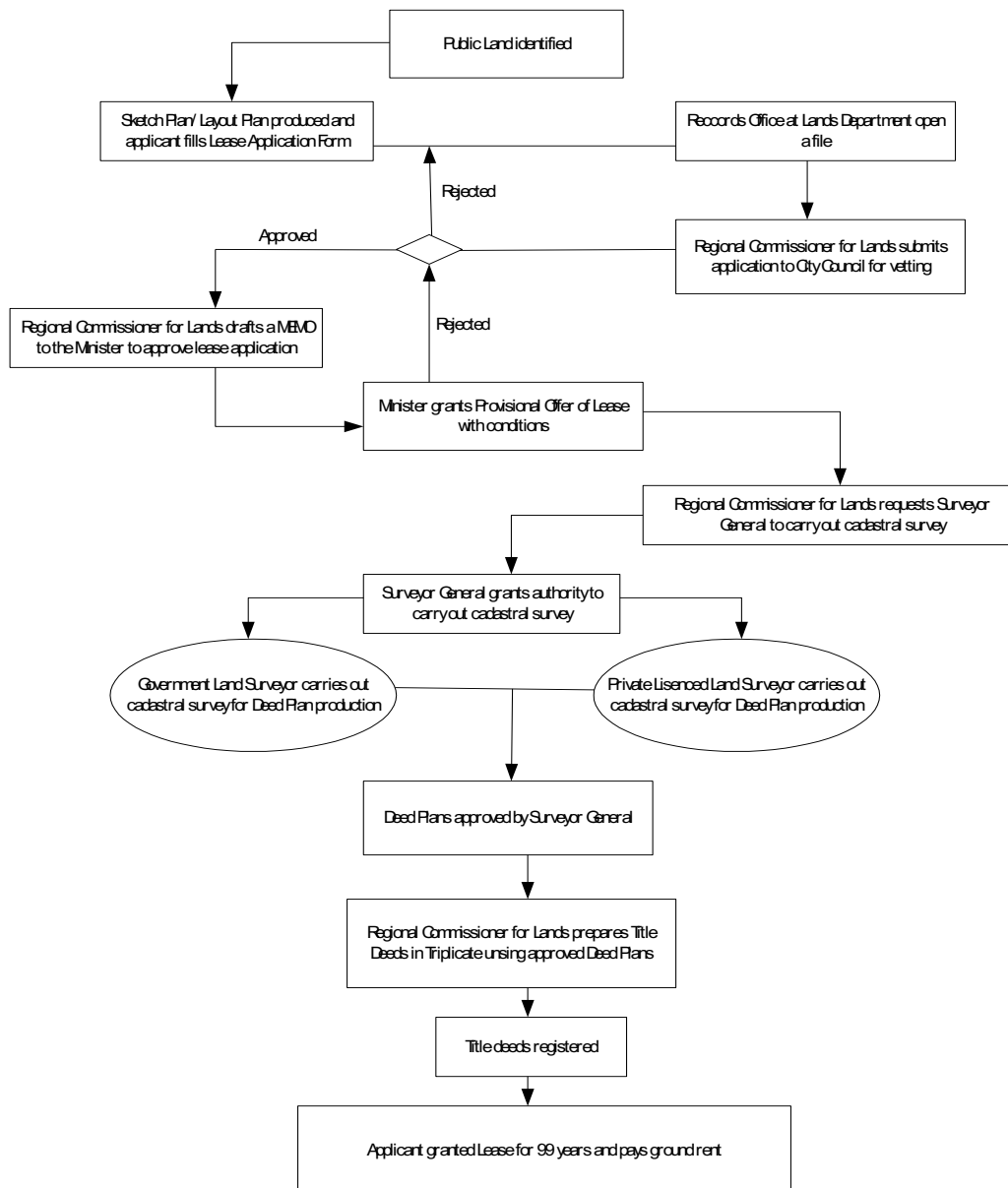
3.4 Land Registration Process in Malawi

Public Land in Cities

Public land is identified by the applicant who asks a surveyor to produce a sketch plan. A Lease Application Form is obtained from Lands Department and filled by the applicant. The filled form and three copies of the sketch plan are submitted to the Lands Department (see Figure 5) where the Records Office opens a file. Once the file is opened the sketch plan is submitted to the City Council's Planning Committee for its scrutiny. If the committee has no objection, a memo is drafted to the regional commissioner for lands. The regional commissioner for lands then writes a MEMO to the minister responsible for lands asking him to approve the application. If there is no objection, the Minister grants a Provisional Offer of Lease with conditions. The regional commissioner then writes a survey request to the Surveyor General for a cadastral survey to be carried out. The Surveyor General grants authority to either a Private Licensed Land Surveyor or a government surveyor to carry out a cadastral survey for the production of Deed Plans. Once the Land Surveyor has carried out the cadastral survey, it is submitted to the Surveyor General's Office for checking and approval. Once approved by the Surveyor General, three copies of the Deed Plan are sent to the Regional Commissioner for Lands for the preparation of a Title Deed.

The title Deed is then registered and the applicant is given the original copy. The Leasee is then required to pay ground rent to government annually.

Figure 5: Land Allocation Process



Source: Authors, 2019

Customary and Public Land in Districts

The process of land registration in Districts Councils for customary land and public land is similar to that in urban areas. The departure is that on customary land, the applicant has to fill two forms namely; Lease Application Form and Consultation with Chief Form. In this case the lease application process recognized the powers of Traditional Authorities to allocate land in their respective jurisdictions. Again, the vetting of the application is by the Regional Physical Planning Committee rather the District Council.

Recognition and enforcement of rights

Rural land tenure rights are legally recognized by the Customary Land Act of 2016 which has provided mechanisms for registration and conflict resolution. According to the Land Act of 2016 there are basically two land tenure types in Malawi: public and private. Although the new act defines customary land, it is not a category. In this case customary estate has been categorized as private land.

Public land in rural Malawi includes all land acquired and occupied by the Government institutions such as schools, hospitals and other government service institutions, land in trading centres and townships not in private ownership, irrigation schemes, forest reserves, parks and game reserves and lapsed leasehold lands. The new act also categorises as government land all the customary land that is unallocated. Private land is land under freehold, leasehold title or certificate of claim, or is registered under the Registered(Amendment) Land Act and all customary estates. Most rural estate land is either freehold or leasehold.

Before the Customary Land Act of 2016, customary tenure was the predominant tenure in Malawi. According to Jere (2012) customary land tenure accounted for about 68% and most of this land is in rural areas. This category hosted almost 80% of the population living in the rural areas. This land was accessed primarily through inheritance (52%) and marriage (18%). Basically, there are two customary systems namely matrilineal system and patrilineal system. The matrilineal system is prevalent in the central and southern regions of the country. In this system land is handed down through the female line. The patrilineal system is prevalent in the northern region, and land is transferred from fathers to sons.

According to the old Land Act, customary land belonged to the Government through the President but entrusted to custodianship of the community leaders i.e. traditional authorities. The enactment of Customary land Act of 2016 implies that traditional authorities have no powers to administer this type of land.

In order to ensure tenure security in Malawi, the Customary Land Act of 2016 has included the creation of customary estates in rural areas. This will allow individual land titling. In this case, the Government promises to affirm customary tenure security by granting full legal protection to customary estates. According to the Customary Land Act of 2016, the property rights contained in a customary estate will be private usufructuary rights in perpetuity once registered. The title of the owner will have full legal status and can be leased or used as security for a mortgage.



Under the new legal system, the customary estate will be legally recognized, officially recorded and registered at individual parcel level.

Urban land tenure rights are legally recognized

The newly enacted land related bills now provide legal frameworks for land rights of urban populations. However, there are several actors in urban land management and administration including local councils (city, municipal and town) and government agencies such as the Ministry of Lands Housing and Urban Development, Malawi Housing Corporation. These actors have mandates to allocate plots in urban areas. These are mostly under leasehold tenure with some in traditional housing areas only having certificate of occupancy. There are also some areas in peri-urban areas where the old customary land allocation is still dominant. These are areas where informal settlements are growing fast with no legal recognition.

According to Jere (2012) full legal recognition of urban land tenure is however hampered by some obstacles which include rapid urban growth, the requirements and impacts of formal title registration replacing informal land holding, and high cost of legal fees needed to formalise titles. Additionally, he noted that this situation has resulted in the proliferation of informal settlements and slums which are often located in unplanned and under-served neighbourhoods typically settled by squatters without legal recognition or rights. They are often located in high-risk and barely habitable sites, such as hill-sides, garbage dumps and river banks.

Rural group rights are formally recognized

The Customary Land Act of 2016 Section 14 provides for the land committee to determine a portion of the customary land to be set aside as communal customary land. The land committee will have a register of all the communal customary land. This land will be for public occupation and use. Communal customary land is also all land that has been habitually used whether as a matter of practice or under customary law or regarded as available for use as communal or public land before the enactment of the Customary Land Act of 2016. The new legislation will result in communal land being formally recognized. The Customary Land Act of 2016 has provisions for land management committees at village level. In order to safeguard against unintended landlessness, all dispositions of customary land shall require approval and signature by the relevant head of the landowning group, the chief, and an independent member of a democratically elected Customary Land Committee dealing with the administration of customary land. The new act has elevated customary tenure to full common law status so that customary estates are categorized as private land. Private land is defined as both land under freehold tenure and customary land that has been allocated exclusively to a clearly defined community, corporation, institution, clan, family or individual. This is now known as customary estates.

Urban group rights are recognized in informal areas

According to Jere (2012), group tenure in informal urban areas is not formally recognized but groups can gain legal representation under other laws. Group rights in informal urban areas are not formally recognized by law, but sometimes group rights are recognized under other statutes e.g. Trustees Act and Cooperatives Act if people are organized through NGO initiatives such as Homeless Peoples Federation and Centre for Community Organisation and Development (CCODE). CCODE works in alliance with the Malawi Homeless Peoples Federation, a social movement comprised of groups of people living in Traditional Housing Areas (THAs) and squatter areas. These NGOs mobilise urban poor communities in informal areas to secure low cost housing by organizing them into groups.

Surveying and registration of rights to communal land

According to Jere (2012), less than 10% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered. In Malawi, most boundaries are not surveyed and registered. Traditional Authority areas and village boundaries are only known by the owners using natural features such as rivers, trees, roads, rocks and hills. In rural areas, the demarcation and registration has only taken place on leasehold estates. The new Customary Land Act of 2016 has proposed individualisation of rights by granting full legal recognition and protection through creation of customary estates. The Act has also recommended that all TLMA boundaries should be adjudicated, demarcated and registered. This will require the review of Chiefs Act in order to include clear definition of villages.

Registration of individually held properties in rural areas

In rural areas of Malawi, there has never been any attempt to parcel out land completely in order to show clearly individual land ownership. Most of individual land in rural areas have been held under customary law and have not been subject to registration. The only other lands which are formerly registered are those of Lilongwe West where the implementation of the Customary Land (Development) Act was effected. The land in this area was registered into family representatives on behalf of family groups with freehold status. They are also only a few estates under leasehold or freehold tenure that are formally registered under the old Registered Land Act because it was a requirement to get a license or sales quota for special crops such as tobacco. The Customary Land Act of 2016 has made provisions regarding registration and titling of rural land into customary estates and subsequent transforming into private land.

Registration of individually held properties in urban areas

Malawi is now a planning area, which means development cannot take place without the permission of the relevant planning authority. In the past areas that were declared as planning areas were mainly within the city councils, municipal councils and town councils. This meant that any development required planning permission before it could take place. As a result most of the permanent developments in planning areas are supposed to be registered. According to Jere (2012), between 50% and 70% of individual properties in urban areas are formally registered.

There are many properties in informal settlements and in traditional housing areas which are not registered formally.

Women's rights recognised in practice by the formal system in both urban and rural areas.

The Constitution of Malawi prohibits gender discrimination. Women and men have the right to own land, individually or jointly with others. However, the dualism in legal systems often have some bearings on rights of individuals. For time immemorial, land ownership and inheritance have been governed by customary law and traditional practices in Malawi. The main challenge in Malawi is that there exists both matrilineal and patrilineal systems. Jere (2012) argues that tenure security is lowest for women in patrilineal societies. However, recent studies have also shown that even women in matrilineal systems similarly are very tenure insecure. Jere(2012) further reveals that the prevailing situation in Malawi is that less than 15% of land registered to physical persons is registered in the name of women either individually or jointly. The new Customary Land Act of 2016, has included the provision for six members in the land committee three of whom shall be women in order to address the gender issue.

Compensation due to land use changes

As discussed above, issues of compensation have been adequately handled in the Land Acquisitions (Amendment) Act. The Act provides comprehensive provisions on regulation of land acquisition and compensation to reflect the issue of appropriate compensation. The amendments to the Act include measures to ensure transparency in the assessment of fair compensation by setting out clearly the factors to be taken into consideration in assessing compensation, and also appointing an independent valuation surveyor to carry out the assessment. Another pertinent issue the amended Act has tackled is that the old Land Acquisition Act provided that the assessment done by the Minister responsible for land matters was final and his decision was not subject to any appeal to, or to any review by any court. The amended Act provides that any aggrieved party will have the right to appeal to a court of competent jurisdiction.

4 Land dispute resolution

Disagreements over ownership, boundaries and access to and use of land and water are the major causes of disputes.

4.1 Assignment of Responsibility

There is enough ambiguity in the assignment of management of responsibility of different types of public land. This affects the management of assets to clearly know the various actors' roles on land management and they sometimes do not know what to do when disputes arise. There is little sharing of information with each other and with the Ministry of Lands, Housing and Urban Development. Prior to the passing of the Customary Land Act of 2016, land disputes were

handled by the traditional chiefs and the judiciary. The current Act provides for land dispute resolution to be handled by tribunals and the judiciary on matters of law while matters of fact can only be handled by the tribunals. This means the traditional dispute resolution mechanism is no longer applicable. Other formal land dispute mechanisms are local courts, magistrate courts, high court and supreme court of appeal.

The passing the Customary Land Act of 2016 has introduced tribunals at various levels to deal with dispute resolutions. An important aspect of the Malawi land policy is the establishment of a more democratic and transparent land conflict resolution system in the form of National level, District level and Traditional Authority level Land Tribunals. Any person who is aggrieved regarding the land committees' decision is supposed to lodge a complaint to the land committee either orally or in writing. In this case the committee shall appoint a mediator to resolve the dispute. If the party who complained on the dispute is not satisfied with the result of mediation, he/she can lodge a complaint to the customary land tribunal. Each customary land tribunal will have a record for all the disputes. Within 30 days of registering a dispute, the Customary Land Tribunal shall hear the dispute. Where the parties fail to reach an agreement the customary land tribunal shall have powers to adjudicate the dispute in accordance with law and custom.

Any party that is aggrieved and is not satisfied with the judgment from the customary land tribunal may appeal to the District Land Tribunal within 30 days. The District Land Registrar shall fix a draft of hearing the dispute within 30 days from date of registration. Note that the proceeding of the customary land tribunal and district land tribunal are open to the public. The District Land Tribunal shall hear and determine an appeal before it within 60 days of the serving of notice of hearing. Any party who is aggrieved with the decision of the District Land Tribunal may appeal to the Central Land Board within 30 days. The decision of the Central Land Board shall be final on any issue of fact and no appeal shall be referred to the high court. Any party aggrieved by the decision of the Central Land Board may appeal to the high court on point of law within 30 days from the date of determination.

In the past dispute resolution of land matters was unsatisfactory in that multiple players were involved in the process. The main players then were chiefs (on ownership and inheritance), District Commissioners (for and on behalf of the Administrator General) on inheritance and succession, and the acquisition of customary land for public use, the High Court generally and Resident Magistrates courts (in limited cases). The limited jurisdiction conferred on Magistrates and Local Courts excluded access to courts by a large number of the rural population, who had to do with informal proceedings before chiefs.

Resident Magistrate courts have limited jurisdiction in land matters because by Section 39 of the Courts Act. Magistrates Courts are prohibited from determining any civil matter whenever the title to or ownership of land which is not customary land is in question.

However, Section 156 of the old Registered Land Act empowered Magistrates Courts to deal with Civil suits proceedings relating to ownership or possession of land, or a lease or charge registered under this Act or any interest in any such land if such claim does not exceed £200. Concurrent jurisdiction is given to the High Court for claims in excess of £ 200. However, Sections 36 and 37 of the old Land Act empowered magistrate courts to deal with matters where there has been unlawful occupation of private land. The same jurisdiction was extended to Traditional Courts under the now repealed Traditional Courts Act.

Prior to the passing of the Customary Land Act of 2016, the High Court had unlimited jurisdiction to deal with all legal issues including all land matters. Most reported land dispute cases concern cases that have been handled by the High Court.

Informal or community based dispute resolution

As indicated in the above sections, in the informal dispute resolution mechanisms were provided through the local chief from village chiefs to Group Village chiefs to Traditional Authority chiefs. The chiefs were recognized under customary law which varied from one area to another but the powers of the chiefs were also legally recognized under the Chiefs Act. Beyond these, the cases were referred either to the district councils or to the formal court systems.

There is an informal or community-based system that resolves disputes in a manner that is not always equitable and decisions made by this system have limited or no recognition in the formal judicial or administrative dispute resolution system.

Possibilities for Forum shopping

In Malawi, there are parallel avenues for conflict resolution on land related matters especially for public and private land. One can use these channels (informal and formal) in parallel although in principle they are supposed to be used in succession. One can also pursue a same case at two levels of the court system e.g. at magistrate court and at the high court at the same time. These different avenues are supposed to develop mechanism for sharing information but the sharing of information and evidence at different levels is often ad-hoc and not systematic. The court system may seek information and evidence from the tribunal/administrative system for reference but they are not mandated. There are also incidences where the court system has ignored informal proceedings as lacking legal backing. As land related cases increase, there is need for an elaborate system of documenting and sharing information and evidence on cases so as to ensure speedy resolution and minimize incidences of forum shopping. There are no clear linkages and synergies with the formal court systems for sharing information and evidences.

According to the panel experts, in Malawi a process exists to appeal rulings on land cases but costs are high and the process takes a long time. A process exists from lower level but land related cases most of the time take too long and may sometimes never be concluded. There are also some alternatives to using judicial system that are available to resolve land disputes. These include: Arbitration (if parties agree) and Mediation (High Court Procedure). Considering the



costs and delays in the formal court systems to resolve land matters, the new land related laws have established land tribunals to specifically deal with land disputes.

4.2 Efficiency of conflict resolution

A study on the efficiency of conflict resolution concluded that land disputes in the formal Court system are less than 10% of the total court cases. This was based on analysis of a sample from the High Court registers at Chichiri, Blantyre for concluded cases over a period of five years and a few older cases. This being the largest high court establishment, the situation prevailing could give an indication of the other courts. It was found that the following land matters were dealt with at the High Court in Blantyre(see Table 5).

According to Jere(2012) the panel of experts felt that land disputes in the formal court system are between 10% and 30% of the total court cases. In rural areas the most common and increasing cases relate to inheritance/family disputes followed by boundary/trespass disputes. Boundary disputes although common are often delayed because of reliance on professional survey to be done to provide evidence. In urban areas, there are increasing cases of fraud in the deeds registry whereby people infiltrate the deeds registry and steal information on title deeds for fake transactions. Other cases though decreasing in recent years relate to mortgage loans.

Table 5: Summary of Land cases at High Court

| Type of Dispute | Number of conflicts (in sample or dataset) | Average Time to Resolve (months) | Average Cost to Resolve |
|----------------------------------|---|--|----------------------------|
| Inheritance/family dispute | 5 | 18 Months | >MK50,000.00 |
| Property transaction/contract | 12 | 32 Months | > MK50,000.00 |
| Challenge to ownership | 10 | 31 Months | >MK50,000.00 |
| Expropriation | 4 | 18 Months | > MK50,000.00 |
| Boundary dispute | 10 | 16 Months | > MK50,000.00 |
| Dispute over use | 5 | 9 Months | > MK50,000.00 |
| Trespass | 5 | 19 Months | > MK50,000.00 |
| Mortgage/loan | 13 | 12 Months | > MK50,000.00 |
| Other (please specify) | 3 | 26 Months | > MK50,000.00 |

Source: Jere(2012)

All the experts however noted that land proceedings and disputes are on the rise and it is desirable that proper mechanisms suitable to the whole country are established and maintained.



5 Valuation and taxation of land: principles and processes

5.1 Principles and Processes for different types of valuations and taxation

The property taxes are assessed based on valuation of property which is supposed to be updated every five years through Quinquennial Valuation Roll (QVR) and annually through Supplementary Valuation Roll (SVR). These taxes include property taxes (e.g. city rates) and income tax on property which are rented out. The local authorities are responsible for collecting city/town rates while the Malawi Revenue Authority is responsible for collecting income tax. The challenge for the local authorities comes on enforcing payment of the assessed taxes due to lack of capacity and resources.

The assessment of land tax is based on market prices. However there is a difference in values between recorded values and market prices across different uses and types of users. Most people have no access to the valuation roll because it is centrally kept by the local authorities. The annual tax collections depend mainly on three factors: **(1)** amount of ratable value, **(2)** rate levy imposed and **(3)** rate collection efficiency. Increases in ratable values result largely from supplementary valuation rolls carried out on newly constructed properties and changes in land use. In Malawi, major losses in property tax arise from under-collection as a result of delays in renewal of valuation rolls. Additionally, there is a general lack of capacity to enforce compliance. There is flat tax levied on land which is under leasehold from the Government. This kind of tax is called Ground or Land Rent. Ground rent is administered by the Ministry of Lands, Housing and Urban Development through its Regional Offices. For leaseholds from the Government, there is a clear formula for the calculation of ground rent for residential and commercial lands which fall within statutory planning areas.

In Malawi, all land parcels are now subject to the Physical Planning Act of 2016 and are required by law to comply with land use and physical planning regulations. Furthermore, local governments have the power to levy property taxes, user fees, development impact charges and scrutiny fees on all property owners who directly or indirectly benefit from public services. However, mechanisms to allow the public to capture significant share of the gains from changing land use (e.g. betterment taxes, levies for infrastructure, property tax) are not applied transparently. It is observed that there are no mechanisms for determining and sharing or distributing benefits. In addition, since public input is not sought to bring out their demands, benefits cannot be guaranteed.

The Local Government Act No. 42 of 1998 provides a legal basis for the process of property valuation and rating. The law indicates that all land within a local government area, together with all improvements of every description thereon shall be assessable property. The exceptions to this are all streets; sewers and sewage disposal works; land for cemeteries, crematoriums and burial grounds; land and improvements used as open space; and railway lines used for transit. Local authorities may grant exemptions on any property based on valid grounds which may be reviewed from time to time. Currently parishes/churches and cemeteries are exempted from

land property taxes in Malawi. Schools and hospitals are on half rate while residential properties are fully rated.

The law provides for the local authorities to undertake a valuation of all assessable property within such an area continuously or from time to time not less than once in every five years. The law also calls for the local authorities to undertake a supplementary valuation once in every twelve months to include any new assessable property or any property which was omitted during the creation of the valuation roll. The law highlights that the total valuation of any assessable property shall be based on fair price based on market prices. According to experts on valuation, the assessment of land/property for tax purposes in Malawi is based on market prices, but there are significant differences between recorded values and market prices across different uses and types of users or valuation rolls are not updated regularly or frequently (greater than every 5 years). The law says that values of property should be kept static (although market values change over time) until valuation roll is updated. Unfortunately valuation rolls including the supplementary roll are not updated regularly as per law due to lack of resources by local authorities to hire professional valuers. The provisions of the act are mostly applicable to urban areas and are not applicable to agricultural rural land. It was also noted that valuation rolls does not include informal areas and new areas of urbanisation. As a result, the city councils have not been in control of new developments in urban areas.

5.2 Public availability of valuation rolls

The Local Government Act calls for rates/duty or levy to be effected for all assessed property in the valuation roll. The city councils do not have up to date information on how much property there is and the growth rate of the cities. The Local Government Act under Section 75 stipulates that the valuation rolls be publicly disseminated and accessible for inspection by any interested person for all assessable properties that are considered for taxation. However a lot of people had no access to the valuation role because it is centrally kept by the local authorities.

5.3 Transparency and efficiency land/property taxes collection

The Local Government Act empowers the minister to designate any area to become ratable. The Act further provides for the assessment and application of property rates in a ratable area as one of the sources of revenue for Local Councils. However, there are no clear criteria for creation of a ratable area as such only 12 of the 38 Local Government Areas in Malawi have been declared ratable areas. It is therefore important that the criteria set for declaring an area a ratable area should be clear and not be overly restrictive to the extent of excluding the majority of the Local Councils. The cost of collection of property taxes by the local authorities and Malawi Revenue Authority (MRA) is considered to be high. This is due low compliance by property holders. As such the amount of taxes collected may not offset the costs unless extra efforts to collect and enforce compliance by property holders. A lot of property taxes are not paid by property holder so that the local authorities are forced to publish names of defaulters in newspapers and use other threats to enforce payment.

6 Land use Planning and Control

6.1 Land use planning framework and process

Malawi Government (central or local) follows the pattern of *'survey-analyse-plan'* as advocated by Ratcliffe (Ratcliffe, 1981). Additionally, the government mainstreams the land use planning process using the principles of transparency, accountability and participatory democracy thereby promoting good urban land governance (Malawi Government, 1988) and (Malawi Government, 2002).

However, having a policy guideline in place is one thing and implementing the same is another. For example Jere (2012) observed that there was little or no evidence that public input was sought and utilized on a regular and systematic manner when making and amending land use plans in urban areas of Malawi. In this regard he went further to recommend that the issue of public input in land use planning should be made mandatory by law, like how the requirement of an Environmental Impact Assessment is handled by the relevant Act.

The Physical Planning Act of 2016 gives the mandate to prepare physical development plans in Malawi to the central government (i.e. Department of Physical Planning in the Ministry of Lands) as well as the local governments (i.e. 38 local authorities at various levels viz district/town/municipal/city councils). In particular, the scope of the remit of the central government is limited to preparing the national physical development plan and the approval of district and local physical development plans that have been prepared by local authorities. On the other hand, the local authorities are mandated to prepare district and local physical development plans subject to the approval of the central government.

In the past only a few local authorities of Blantyre, Lilongwe, Mzuzu and Zomba city councils, were given delegated powers to prepare local physical development plans. Furthermore, the preparation of the National physical development plan and the District physical development plans then remained the remit of the central government.

In principle this means that citizens and other relevant stakeholders of any given local government area have now an opportunity to participate in the framing of relevant physical development plans through their respective local authority. Such should be the case because the Local Government Act of 1998 (Malawi Government, 1998) mandates local authorities to manage the affairs of their respective local government areas based on democratic principles of accountability, transparency and participation of the people in decision-making and development processes. Moreover, the plan making process, as noted earlier on, emphasises the need of inclusiveness and participation in land use planning.

According to the Physical Planning Act of 2016 the governance structure which is responsible for the preparation of physical development plans such as urban structure plans and issuing development permits at a given local government area on behalf of the relevant district/town/municipal/city council is the Planning committee (Malawi Government, 2016). Therefore, the composition of this committee, the way it is instituted and how it carries out its

duties can either enhance or impede the need to promote the principles of good land governance.

Out of the 12 members who are supposed to be in this committee, it is prescribed that 10 and 2 members should be experts and elected officials respectively. This implies that the voice of experts, the majority of whom would be the employees of the local authority, would dominate the relevant deliberations such as the consideration of applications for development permits. Apparently this approach can run counter to the principle of good urban land governance where all relevant stakeholders are supposed to be heard in matters that can affect them.

According to this Act the responsibility of instituting this committee has now been given to the relevant local authority or council. This arrangement is different from the past experience, subject to Town and Country Planning of 1988, where the Minister responsible for Physical Planning matters was tasked with this responsibility. This change has the potential of promoting transparency and accountability to a certain extent in principle. However, the guideline provided by the new Act regarding who should be in this committee, as explained above, would somehow limit the council's ability to put up an inclusive governance structure that would take on board other stakeholders like NGOs, interest groups and so on.

Jere (2012) observed that land use planning in rural areas of Malawi then, was not fully institutionalized to the extent that it was happening on ad-hoc basis. With the putting in place of the new Act, as already mentioned, the whole country is now a planning area. Given this significant change the other role of the planning committee entails coordinating the preparation and approval of the so called *simple layout plans*. Simple layout plans are meant to guide the physical development of rural areas within the *Traditional Land Management Area* which is under the jurisdiction of the Traditional Authority in line with the Customary Land Act of 2016.

6.2 Delivery of services

Physical development plans such as urban structure and urban layout plans are the tools which are used by the public sector planners to guide and manage the development of land in urban areas of Malawi. Accordingly, the plans are supposed to be updated periodically in order respond to emerging issues which have land use implications such as increased demand for residential plots due to increased urban population growth.

However, Jere (2012) showed that one of the major issues facing the physical planning sector in urban Malawi is the failure to keep urban structure plans up to date. In fact at the time when this study was being conducted Lilongwe, Mzuzu, Zomba and Blantyre cities had outdated urban structure plans. This makes the land management situation even worse because already the process of preparing or revising an urban structure plan takes time. In fact in most cases the time involved can be a year or more. The Jere (2012) further showed that the factors which are

responsible for this state of affairs are lack of human and financial capacity, late alone lack of commitment on the part of the urban managers.

One of the main implications of this issue is the failure by the relevant physical planning authority to cope with emerging urban issues, which have land use implications, such as rapid urban growth and the associated increased demand for land for urban development. In other words, under the circumstances the formal urban land delivery system is unable to meet the prevailing demand for serviced land for commercial, industrial and more importantly residential use thereby forcing potential housing developers to acquire the same from the informal land delivery system (UN-Habitat, 2010). This eventually leads to the mushrooming of unplanned or informal settlements in urban Malawi. Apparently the growth of unplanned or informal settlements is one of issues cities of Malawi are facing (UN-Habitat, 2012). This institution further points out that unplanned settlements in Malawi are the result of scarcity of serviced land for housing; poor maintenance of services and infrastructure.

The cities of Lilongwe, Blantyre, Mzuzu and Zomba initiated the Participatory Slum Upgrading Programme in 2012 in conjunction with UN-Habitat, European Commission and Cities Alliance. The programme was supposed to improve the lives of slum dwellers by addressing the five deprivations that characterize a slum namely, inadequate water; sanitation; durability of housing, overcrowding and tenure insecurity.

This implies that, currently, urban or city councils in Malawi rely on donor support to address infrastructural challenges which are associated with informal settlements. Some local initiatives such as the Malawi Social Action Fund (MASAF) Phase IV which also addressed infrastructural challenges facing such areas, among other objectives, is financed by the World Bank through the Local Development Fund. Other key actors who provide services to urban residents in Malawi are water and energy supply institutions such as Blantyre Water Board and the Electricity Supply Corporation of Malawi (ESCOM) respectively.

The UN-Habitat (2010) reported that there was a difference of the quality of service delivery in the formal and informal parts of the cities of Malawi. In the formal parts of the city, in low-medium-and-high-density areas, water supply to, or close to, each dwelling is standard. Sanitation is by water-borne system either to septic tanks or a local sewerage system. Electricity supply is quite extensive and roads are likely to be engineered and topped with bitumen except in the THAs where roads are engineered to earth standards with only the main road topped with bitumen. On the other hand, in the informal parts of the city, water supplies are by kiosk or shallow well, sanitation relies on pit latrines, there is little electricity supply and non-surfaced (and even non-engineered) earth roads are the rule.

The large sector of the urban population in cities of Malawi resides in the informal parts of the city. Over 70 percent of the urban population in Blantyre city lived in unplanned/informal areas. This means is that these institutions providing services have a lot of work to do.

6.3 Development permits

According to the Physical Planning Act of 2016, all the 38 local authorities in Malawi are mandated to process applications for development permits through a local governance institution called a planning committee. This committee was instituted by the Minister in selected city councils of Malawi under the old legislation.

The process for obtaining a development permit takes a number of steps such as; pre-application consultation (developer), procurement of buildings and related plans (developer), submission of an application (developer), preliminary consideration of an application (technical panel committee), consideration of an application (planning committee), issuance of a notice of decision (planning committee) and receipt of notice of decision. Experience has shown that most potential developers find this process complicated, time and money consuming. In fact, Jere (2012) observed that the level of public awareness of this procedure is very minimal in Malawi.

The Physical Planning Act 2016 directs the relevant planning committee to process the application for development permit within a period of 30 days starting from the day when the application is received. This is a significant departure from the previous provision, under the replaced Act, where the period involved was 60 days. In principle, the delays which have been associated with this process could be reduced given this change. However, it should be pointed out that if the fundamental factors which are responsible for this delay are not addressed, such as lack of financial and human resources to facilitate the organization of technical panel and planning committee meetings, the situation will not change on the ground.

An equally important governance institution as far as development permits are concerned is the Physical Planning Council whose function is to hear and determine appeals lodged by a person aggrieved by the decision or action of any planning committee or the Commissioner.

The Minister responsible for physical planning is mandated to institute the Council by way of appointment. The Physical Planning Act 2016 further directs that the composition of this body should include 13 experts and 3 representatives of NGOs. What this means is that deliberations of the Council would be dominated by experts at the expenses of other relevant stakeholder such as special interest groups. As pointed out earlier on, this arrangement has the potential of stifling the promotion of the principles of good urban land governance.

This Act does not give the Council a timeframe within which it is supposed to make a decision on an appeal case. In the absence of the guideline of this nature issues bordering on effectiveness and efficiency can be raised.

The factors which are taken into consideration when processing an application for development permission, by the planning committee, are clearly outlined in the Physical Planning Act of 2016. Some examples of such factors include; (1) the foreseeable impact of the proposed development on the natural or built environment and on adjacent uses of land, (2) the quality and economy of the proposed development, its proposed layout and the quality of its architectural design, (3)

consideration of noise, air, water and ground pollution, and any other detrimental effect the proposed development may have on the amenity and built environment of the area and adjoining land uses, (4) traffic considerations, (5) the contribution the proposed development may make to economic and social facilities and welfare, including employment, within the area, (6) whether the proposed development is desirable, convenient or necessary having regard to the public interest.

Moreover the planning committee is required by law to inform an applicant why his or her application for a development permit has been refused. This, in principle, ensures that such decisions are consistent and predictable to a large extent.

6.4 Land Use Control

The 1988 Town and Country Act and the new Physical Planning Act of 2016 provides for the necessary institutional frameworks (i.e. planning committees, public sector physical planners and town rangers) and guidelines for monitoring and enforcement of approved land use plans such as urban structure and layout plans. However, the extent to which this important function of the physical planning sector is performed both at the central and local government level can be described as below average. The vivid justification of this assertion is the fact that the majority of urban dwellers in Malawi reside in unplanned or informal settlements which in most cases occupy land which was zoned, by the approved urban structure or layout plan, for say industrial or commercial use and in other cases it might have been classified as environmentally sensitive or undevelopable, i.e. flood plain, therefore not fit for human settlements. In Blantyre city such settlements can be found in areas such as; Chilobwe (on the steep slopes of Soche hill) and Ndirande (within the banks of streams and rivers and on the steep slopes of Ndirande hill).

Some of the factors that are responsible for this state of affairs are as follows; inadequate public participation in the planning process(i.e. when preparing urban structure and layout plans), politicisation of sensitive decisions made by planning authorities such as planning committees or the planning council (previously planning board), lack of human and financial resources.

6.5 Climate change and environmental management

The nature of physical planning practice in Malawi, with regard to the preparation of urban structure and layout plans, is that it classifies land that is destined for urban development into developable and undevelopable or unsafe categories thereby promoting sustainable urban development. Some examples of land which is classified as undevelopable include; flood plains, river and stream banks, road reserves, on-the-top and steep slope of hills and mountains, draining and non-draining wetlands and nature reserves (i.e. forests). In principle the implication of this is that development permits are not issued in such areas or zones.



What is happening on the ground especially in the four cities of Malawi, is that the majority of the so called unplanned or informal settlements are found in zones classified as undevelopable or unsafe. Some residents of these settlements have been affected by the effects of climate change. In 2014 and early 2015, Blantyre city, Chilobwe, Ndirande and Bangwe settlements in particular, experienced its worst natural disaster in living memory. Up to 5 people were confirmed dead and three missing and 3,000 houses swept away/collapsed/damaged by heavy rain and floods (UN-Habitat, 2016).

The prevalence of this malpractice in urban Malawi is explained in part by the following factors; poor monitoring and enforcement of the approved plans by the relevant planning authorities, lack of access to serviced land by the urban poor and questionable land use decisions on the part of potential developers where economic considerations override disaster risk concerns. Therefore climate change and environmental sustainability issues are integrated in the land use planning process in Malawi to a large extent however what is found wanting is the task of turning the approved strategies into action.

7 Management of public land

Public land is the property of government which includes public roads. Land also attains public land status after it is a statutory planning area. Public land ownership is justified by the provision of public goods at the appropriate level of government. However, management of such land may be discretionary. Public land is managed by agencies at various levels. These include local authorities (city, town and district councils) and statutory undertakers i.e. the Malawi Housing Corporation. In 2012, an estimated 1,781,936.8 hectares of land was under conservation such as forest reserves, national parks and game reserves. The remainder was land used for schools, hospitals and other government structures and service centres. There is no information on how much public land there is and how it is managed at different levels.

The Land Act of 2016 has categorised land into two namely; Public and Private Land. Government Land refers to land acquired and privately owned by the government to be used for dedicated purposes such as government building, schools, hospitals, public infrastructure or made available for private use by individuals or organizations through concessions. Public Land refers to land managed by agencies of the government and in some cases by traditional authorities in trust for the people and openly used or accessible to the public at large. This includes land gazetted for national parks, conservation, historical and military sites. Common access land such as dambos and community woodlots managed by traditional authorities are also classified as public land. According to Jere(2012) the situation in Malawi is between 30 to 50% of land is clearly identified on ground or on maps. Such clearly identified public land include public land which is clearly identified is mainly large pieces such as national parks, game reserves

and forest reserves but for smaller pieces held by government institutions such as schools, hospitals, the land is often not clearly identified.

Management responsibility of public land is not clear for different types of public land. Some users of public land do not know their roles and sometimes do not know what to do when disputes arise. There is little sharing of information with each other and the Ministry of Land, Housing and Urban Development. Generally there is limited or insufficient human capital and financial resources to manage public lands resulting into failure to control abuse of public land.

Any allocation of public land for private in the urban or rural areas is registered at the corresponding district registry. This is unlike allocation for public uses for instance land earmarked for National Parks. Such land is gazetted and it is registered with the Registrar of Titles.

The Land Act (CAP 57:01) empowers the minister responsible for lands to dispose of any public land that becomes surplus to the requirements of Government, the Minister or a local government authority by notice published in the Gazette. The process for disposal of public land by both the central government (Ministry of Lands, Housing and Urban Development) and Local Authorities involves submission of an application which is considered by an allocation committee. The committee allocates plots on first come first served basis. However, the process is far from transparent. In 2018, there were several newspaper articles where the higher authorities or people with political power were involved in acquiring land and got preferential treatment and some allocations of residential plots were made to individuals who never submitted any application. There was also a case of Lands Ministry “official” who duped people through false pretense that he would assist in their getting preferential treatment in the allocation of land.

In the past plots were offered at a subsidized rate. Currently the development charges are closely matched with the cost of providing infrastructure. Due to high demand for all categories of plots, plots acquired through the government or local government allocations are sold on the open market, albeit illegally, at a much higher price than what is collected by the government in development charges. This, in itself, is an indication that the government and local authorities are offering their plots at lower than the market rates. Prices for undeveloped plots offered by individuals or by estate agents are usually over 50% more costly than what the government charges. This has introduced speculation where people are benefitting from multiple allocations of plots for sale on an open market. Government has of late started a campaign to stop the illegal sale of undeveloped plots. As long as plots are allocated in a manner that is not transparent and offered at a price lower than the open market value, the illegal sale of plots will continue to flourish.

The Lilongwe City Council expressed concern on overdue payment of development charges. It observed that while individuals are reluctant to pay what is due to the Council; acquisitions through third parties are paid for immediately or within a short period of time. This is even the case in unplanned settlements, confirming an imbalance in the land market. It is also important

to note that due to high demand for residential plots, there are many instances where plot allocation is done in advance of provision of infrastructure.

Information from Lilongwe City Council on the transparency of land allocation and comparison to market values indicated that land allocation process is done not by tender or auction while the value of land is less than 50% of the market value (see Table 6).

The share of public land disposed off in the past 3 years through sale or lease through public auction or open tender process is less than 50%. The government including the local authorities do not use public auction or open tender processes to dispose of public land. As mentioned earlier, public land in Malawi is disposed off through allocation committees. The general public is not provided with any information regarding the frequency of the meetings of the committee, the number of people who submitted application/on the waiting list, committee resolutions and the names of the individuals allocated plots. As such the process is seen by many as lacking transparency.

In the absence of public auction or open tender processes, the public land is not leased at the market price. The central government, local authorities and Malawi Housing Corporation use plot allocation committees and the prices are determined on cost recovery basis. With the demand for plots, especially for residential purposes, far outstripping the supply, it can be concluded that there is a gap between the official price and the market prices. In addition, the fact that third party transactions attract prices much higher than those offered by the government also suggests that the official pricing is artificially determined and is below the market price.

Table 6: Process of Land Allocation

| Destined use of allocated land | Area leased out/sold in last 3 years (ha)* | Transparent process | Consideration compared to market values |
|--------------------------------|--|---|---|
| Residential | 14,485 | 3 | 3 |
| Agriculture & NR | 17,465 | 3 | 3 |
| Manufacturing | 1458 | 3 | 3 |
| Commerce/building | Combined with above | 3 | 3 |
| Tourism | 978.5 | 3 | 3 |
| Codes: | | 1 = All open tender or auction; 2 = Most by open tender or auction; 3 = Most other than open tender or auction. | 1 = At market prices for similar land; 2 = A greater than 50% market prices; 3 = Less than 50% market prices. |

*information only obtained for Lilongwe. There is no information regarding area leased out/sold in last 3 years for other areas at the central registry.



Source: Jere (2012)

Public land is managed either by the central government ministries, Malawi Housing Corporation and local authorities. On the central government side, there is no single Ministry that is responsible for the management of public land. Irrigation schemes are managed by the Ministry of Agriculture, Irrigation and Water Development; nature reserves are managed by Ministry responsible for natural resources, and land under public infrastructure is managed by the responsible sector, while public land under urban development is directly managed by the both Ministry of Lands, Housing and Urban Development, Malawi Housing Corporation and local authorities.

The Investment Promotion Act (CAP. 39:05), commits government to ensure that land for industrial and commercial uses is readily available to investors. The Act places on government the obligation to provide the necessary framework to enable private investors to develop industrial sites, including subleasing to other investors. No distinction is made between local and foreign based investors. Experience has shown that there is less competition for plots in industrial parks. For example, investors have been slow to occupy plots in Chirimba in Blantyre City and Area 28 in Lilongwe City. In Lilongwe, most of the plots are now being used for warehousing.

The local authorities are responsible for management of some of the public land within their area of jurisdiction. This land is predominantly in the high density traditional housing areas and local centres. In such cases, the local authorities are responsible for planning, surveying and demarcation of plots, the provision of basic infrastructure, the allocation of plots and collection of development charges and settlement of disputes.

Section 12, of the Malawi, Housing Corporation Act (CAP. 32:02) empowers the Corporation to apply for grant, lease or other disposition of land in accordance with section 5 of the Land Act where it requires any customary land for the purpose of carrying into effect its mandates under the Act. In this regard, MHC is also responsible for management of some public land in the cities, as well as in small and medium sized urban centres. MHC also uses the committee system in the allocation of their plots. MHC is also a developer and delivers completed houses, largely in the high density permanent category.



8 Land information

8.1 Public Provision of land information

All information in the public land inventory is only available for very few public properties. Land information including that of public land is not publicly accessible and most public land is not properly surveyed and surrounding communities do not know boundaries of public land except when there is a dispute. Information and maps are available but only at deeds registry in Lilongwe and can be obtained upon payment of search fees of MK5000. Key information for concessions such as the locality and area of the concession, the parties involved and the financial terms of the concession, is recorded or partially recorded but is not publicly accessible. Records and information on concessions and land allocations are available with the Ministry of Lands, Housing and Urban Development. However this information and records are not publicly available or accessible and communities and stakeholder are not properly informed when concessions are granted e.g. mining licenses as these have implications on land rights.

8.2 Land administration services

The land services that are provided are land administration and land management. Land administration is the process of determining, recording and disseminating information about tenure, value and use of land when implementing land management policies (UNECE, 1996). On the other hand, land management are activities associated with the management of land.

Land administration activities include registering property, regularization or formalization of informal or illegal settlements, resolving disputes formally or informally, sporadic registration of land, maintaining valuation roll, provision of adjudication services, tax assessment, issuance of building permits, developing and enforcing building standards, classifying land use, offering concessions, facilitating conveyance of land, issuing deeds, land disposition among other services.

Land registry is not financially viable and cannot sustain itself. Currently there are low levels of investment in the registry in terms of capital, human and equipment. A clear schedule of fees for different services is publicly accessible and displayed in the registry and receipts are issued for all transactions. Government periodically publishes schedules through government gazette but these may not be accessible by the majority and the information is not also publicised through other media forums. Additionally, the public does not appreciate the rationale for existing land transaction fees because there is no transparency and public involvement during their formulation.

According to Jere (2012) mechanisms to detect and deal with illegal staff behaviour are largely nonexistent. He noted that senior staff in the Ministry of Lands is supposed to supervise and monitor the operations of the land registry but there are no established mechanisms to detect and deal with



illegal staff behaviour. The Anti-Corruption Bureau also investigates and takes action on all reported cases of illegal staff behaviour relating to land.

There are fragmented responsibilities for land administration among government agencies which results in horizontal and vertical overlaps and conflicts. There is weak capacity (financial, human and equipment) at land registry establishments resulting in poor record keeping and information management.

Land management activities include surveying and demarcating of land and provision of information to the public. There are no clear responsibilities on the management of public land between users such as schools and hospital authorities and land authorities in this case the Ministry of Lands, Housing and Urban Development. There is limited human capacity and financial resources to ensure responsible management of public lands.



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9 Land Governance Key Challenges in Malawi

9.1 Land Laws in Malawi

The Land law in Malawi is ambiguous. Over the years Malawi has developed a comprehensive Legal and institutional framework aimed at regulating and providing sound land governance in land sector. New land related Acts of parliament have just been approved, gazetted and assented by the President. Despite the existence of the new and old regulatory framework there is limited or lack of enforcement of these laws, which impacts negatively on administration and management of land. The major challenges in Malawi include the construction of infrastructure on road reserves and encroachment on public land. In addition there are several illegal developments on road reserves such as cultivation which promote siltation of water storm drainage apart from weakening road strength.

Some of the planning standards, regulations and administrative procedures for registering, developing transferring land in Malawi have a considerable influence over the equity and efficiency of land markets. However norms that are formulated by professionals tend to be inappropriate to the needs of the communities.

9.2 Land Administration

Delays in decentralisation of the functions of the Ministry of Lands, Housing and Urban Development to districts has resulted to delayed delivery of land services. It is believed that services should be located at the closest level to the people for efficiency and cost effective delivery. This implies that people should be able to access services as quickly as possible at the lowest level of administration, which also includes land services. In line with this, the Decentralisation Policy which was adopted in 1998 proposes the devolution of administrative and political authority to the district level to ensure faster and easier access to services. However, the Ministry of Lands Housing and Urban Development is yet to devolve its functions. This will have a bearing on the implementation of the newly enacted Acts of Parliament. For example, the Customary Land Act of 2016 is wholly designed on decentralised land administration system.

9.3 Land Registration

The land registration process is complex. The number of administrative steps, costs and time required to register public land in cities, public land in districts and customary land in districts, discourage many people from conforming to official norms and is a widespread source of corruption. Although the Customary Land Act of 2016 has proposed a new structure of land administration, it has not clarified the exact procedures and processes of land registration.

The complexities of the land registration often results in corrupt practices whereby the applicants end up bribing the land officers to speed up the process. Additionally, communities may encroach

on public and customary land due the delays in the land registration process. This may result in land conflicts, whose consequence is death in some cases.

9.4 Security of Tenure

Section 28 of the Malawi Constitution of 1994 has provided for rights to property, ensuring that any person can acquire property independently or in association with others. Although the constitution has provisions for the need to incorporate access to land for all, there has not been much attention to specific provisions for promoting gender sensitive and inclusive provisions in the new land legislation. What is new in the new Acts is the introduction of the Land Committees, Customary Land Tribunals and District Land Tribunals. The Customary Land Act 2016 has given the responsibility for customary land governance to an elected body based on western democratic principles without following customary norms. The act does not require this land committee to administer customary land in accordance with customary law.

What have been clearly included in the Customary Land Act of 2016 are the Customary Land Committees, Customary Land Tribunals and District Land Tribunals. However, there are no specific provisions directing or facilitating access to land in general or women's, children and other vulnerable groups access to customary land in particular in the new land legislation.

Sources of insecure tenure can originate from the fact that customary land governance is based on custom and practice. The customs are unwritten and can be potential for uncertainty that may affect the rights of vulnerable groups such as women, youth and the disabled. It must also be noted that the customs and practices are dynamic and evolving hence can create further uncertainty that may affect the rights and interests of the vulnerable. The new land legislation has not addressed any general principles to promote access to customary land.

The Customary Land Act 2016 has given the responsibility for customary land governance to an elected body based on western democratic principles without following customary norms. The act does not require this land committee to administer customary land in accordance with customary law. The land committee will have to come up with their procedures based on statute and prevailing land administration practice. In this regard, there are no set guidelines to facilitate transparent and accountable land administration procedures.

9.5 Inequalities in land access for women and vulnerable groups

Despite legislative and policy reforms, women in Malawi have largely remained marginalised when it comes to land rights. In Malawi, whether in patrilineal or matrilineal societies, access to land is typically mediated by men. According to Kishindo (Kishindo, 1997), women have difficulties both in making independent decisions about land use and accessing the benefits derived from land ownership and utilisation .



9.6 Public Land Management

Encroachment on public land poses a serious threat to land governance in Malawi. Illegal structures and other physical developments are being constructed on public land without planning permission. This can affect whole concept of land governance. Encroachment on public land impedes the development plans of the area concerned. The consequence of this is usually disruption in provision of services such as piped water, electricity, telecommunication, hospitals, schools, recreation and business facilities. It also makes provision of proposed infrastructure difficult and costly. However, the newly enacted land related Acts are seen as an enabling legislation and institutional framework that offer some strength to deal with encroachment. However, it must be noted that political interference has always been a challenge to legal and institutional framework. Usually, politicians come in to relax the existing systems in order to gain votes from the culprits who are usually the majority poor.

Squatter settlements are generally characterised by poor and very low income earners. On the other hand, they provide an alternative to the poor majority of the urban dwellers as they cannot afford to follow the formal land acquisition process and develop land through a legally accepted means. Despite being advantageous in this context they have a negative impact on infrastructure development and management. These squatter settlements are generally located in peri-urban environments and are characterized by very poor infrastructure. They are social and economic entities in their own right with a social and economic capital base.

9.6 Corruption in Land Acquisition

The process of land acquisition in Malawi is bureaucratic and time wasting. This is a breeding ground for corruption in which clients pay more than a normal price for a service. In recent years, the then Minister of Lands admitted that there is rampant corruption in land allocation in which for example one plot can be allocated to several applicants in some cases. This practice impact negatively land governance issues.

Public land is rarely or never allocated at market prices in a transparent process. There is evidence that public land in Malawi is priced below the market price and the process of its disposition is not transparent. A lot of secrecy surrounds the allocation process making it susceptible to corrupt practices. There are no transparent forms of land allocation, especially in the more prime sites.

Additionally, the slow adoption of technology in land sector is another factor promoting bureaucracy in land service delivery. Most of technologies that are used to deliver land services are manual which tends to be time consuming. Simple tasks such as production of cadastral maps that could be performed on computer are done manually. This lengthens client waiting time and encourages corruption since the delays force clients to pay extra money as a motivation to get the services quickly.

In Malawi, lack of transparency and efficiency in the land management and administration processes result in rampant corruption in land allocating offices. Public officials (civil servants) have resorted in allocating land based on other criteria's like how much money the officers will get if they allocate the land to that particular person. Corruption denies community benefits from the sustainable management of land resources and mismanagement of land and other resources.

9.7 Political Interference in Land Acquisition

Political interference in land delivery has negatively affected land governance in Malawi. Land sector institutions have failed to perform their duties due to political interference. Legally instituted organs from these institutions have been overridden by political imposition through influential positions in the political machinery. During land allocation, political interference plays a part where deliberate conditions are set to benefit individuals in the ruling government.

9.8 Land Information Management

There is a lack of comprehensive Land Information Management System. Information on land is a very important asset as it helps in land governance issues. A complete database on land is essential as it provides a basis for making land governance decisions based on what exists on the ground, which depends on existence of a comprehensive land information management system. Currently, Malawi lacks this comprehensive land information management system in which information on various themes such as soil type, weather, crop and animal husbandry, geology and demography are deposited at one point for public access. In Malawi is available in different ministries and departments and accessibility is the major challenge. Large amounts of this information are hard copy rather than digital making accessibility almost impossible.

9.9 Lack of a Comprehensive Land Profile in Malawi

There is lack of a comprehensive land profile for Malawi despite the fact that the economic backbone of the country is agriculture which relies on the access to suitable land for promotion of various agricultural activities. In the framework of agriculture development, the Government of Malawi has developed two key policy tools aimed at providing the overall guidance and enabling environment for promoting agriculture development and thus boost its economic growth. However, for these tools to significantly produce the expected economic benefits in Malawi, it will be important for the government to undertake land profiling in order to have data on land availability, land suitability and land accessibility. To be included in the land profile is the information on soil maps, agro-climate maps, and land suitability for rain-fed agriculture under traditional management, land suitability for rain-fed agriculture under improved traditional management, land suitability for wetland rice under traditional management and land suitability



for forestry. The data will be informative and useful for the process of generating information on land availability and suitability in Malawi.

9.10 Accessibility of Land Registration Information

There are challenges to access land administration institutions in order to obtain landownership information or to transfer property. For example the Deeds Registry is in Lilongwe. All information for all properties that are in deeds registry system can only be accessed in Lilongwe. Similarly, all information for property that has been registered using the title registration system can only be found in those cities and towns where the old Registered Land Act is applicable. These offices are mainly in major cities. District registry offices have to be established to save time and costs as per the Registered (Amendment) Land Act of 2016.

9.11 Overlapping Responsibilities

In Malawi, the MLHUD has the mandate of land administration and regulating land use. However, there are some mix-ups between institutions in terms of their specific mandates. The MLHUD mandate tends to overlap with local government and parastatals especially where traditional boundaries are recognised in both entities. The major challenge emanates from institutional overlap with other land sector agencies. The overlaps originate from policy overlaps. Currently, Malawi has several policies such the land policy, housing policy, land use and management policy, mining policy, national parks policy and forestry policy. The conflicts between these policies, tend to cause confusion over jurisdiction and results in inadequate policy interventions.

Another challenge is that the responsibilities between different levels of administrations within institutions may be blurred. Although the decentralisation policy has spelled out the responsibilities from central government, local government and local communities, there are overlaps between these levels in the management and allocation of land.

References for Section A

Jere, P. (2012). *Improving Land Sector Governance: Implementation of Land Governance Assessment framework*. Unpublished Technical Report.

Malawi Government . (1998). *Local Government Act 1998*. Zomba: Government Printers.

Malawi Government. (1988). *Town and Country Planning Act*. Zomba: Government Printers.



- Malawi Government. (2002). *District Development Planning Handbook*. Zomba: Government Printer.
- Malawi Government. (2009). *2008 Malawi Housing and Population Census: Main Report*. Zomba: National Statistical Office: Government Printer.
- Malawi Government. (2016). *Physical Planning Act*. Zomba: Government Printers.
- Malawi Government. (2019). *2018 Malawi Housing and Population Census: Main Report*. Zomba: National Statistical Office.
- Ngo'ong'ola, C, (1990), *The State, Settlers and Indigenes in the Evalution of Land Law and Policy in Colonial Malawi*, The International Journal of African Historical Studies
- Ractliffe, J. (1981). *An Introduction to Town and Country Planning*. London: Hutchinson.
- UN-Habitat. (2010). *Malawi Urban Sector Profile*. London: Earthscan.
- UN-Habitat. (2012). *Malawi National Urban Profile*. London: Earthscan.
- UN-Habitat. (2016). *Disaster Risk Profile and Vulnerability Situation for Soche West Green Corner and Namiyango Wards in Blantyre City, Malawi*. Unpublished Technical Report.
- West, H. (1976). The Nature of Cognatic Systems of Tenure, Discussion paper 1. Department of Land Economy, University of Cambridge, Cambridge.

References for Section B

- Jere, P. (2012). *Improving Land Sector Governance: Implementation of Land Governance Assessment framework*. Unpublished Technical Report.
- Kishindo, P. (1997). Land Tenure: The Case of Salima District, Central Malawi. *Journal of Social Science*, Vol. 16, 57 - 67.
- UN-Habitat. (2010). *Malawi Urban Sector Profile*. London: Earthscan.

Some Land Related Laws consulted

1. Land Act (CAP 57:01)
2. Registered Land act (CAP 58:01)



3. Deeds registration Act (CAP 58:02)
4. Land Acquisition Act (CAP 58: 04)
5. Adjudication of title Act (CAP 58:05)
6. Customary (Development) Act (CAP59:01)
7. Town and Country Planning Act (CAP 23:01)
8. Local Government Act no. 42 of 1998
9. Deceased Estates (Wills, Inheritance and Protection) Act, 2004
10. Land Act 2016
11. Physical Planning Act 2016
12. Land Survey Act 2016
13. Customary Land Act 2016
14. Registered Land (Amendment) Act 2016
15. Land Acquisitions (Amendment) Act Act 2016
16. Malawi Housing Corporation (Amendment) Act 2016
17. Local Government (Amendment) Act 2016
18. Mines and Mineral (Amendment) Act 2016
19. Forestry (Amendment) Act 2016
20. Public Roads (Amendment) Act 2016.