



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



LAND USE POLICY;

IMPLEMENTING PHYSICAL PLANNING ACT IN THE CONTEXT OF MALAWI LAND REFORM PROGRAM

Janet Banda PhD, Felix Tukula, Davie Chilonga

Ministry of Lands, Housing and Urban Development, Malawi

fctukula60@gmail.com

Paper prepared for presentation at the

“2019 WORLD BANK CONFERENCE ON LAND AND POVERTY ”

The World Bank - Washington DC, March 25-29, 2019

Copyright 2019 by author(s). All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



ABSTRACT

Malawi enacted 10 land related laws in 2016 and all of them are now in force and subject to implementation as part of the Malawi Land Reform Program. The laws are part of the implementation of the Malawi National Land Policy of 2002 that advocates for the attainment of social harmony and broad based social and economic development through optimum and ecologically balanced use of land and land based resources. One of the main objectives of the National Land Policy is to extend land use strategies to all urban and rural areas. In the absence of a comprehensive and up to date national spatial plan for the country, district and local land use plans, the Land Reform Program needs to come up with innovative means of incorporating land use policy planning matters in the implementation of the key land laws and in particular the Customary Land Act especially regarding the adjudication of land for purposes of registering and titling of customary estates to ensure equitable access to land and security of tenure. The implementation of the land related laws especially the Customary Land Act does not have to be negatively affected by the lack of up to date land use plans. The paper proposes ways and means of making sure that land use policy matters are taken into account in the granting and titling of public and private customary land.

In determining applications for grant of customary estates, the customary land committee is required to take into account such factors as location, purpose for which the land will be used for and in accordance with the land use plan applicable in the area. The systematic area adjudication is therefore recommended to facilitate registration as customary estates as it will have to incorporate land use policy matters. Land use planning is therefore to be part of the participatory adjudication exercise to be reflected in the demarcation map and adjudication record while preparation of comprehensive land use plans will take place incrementally throughout the country by taking advantage of the socio-economic development planning system of local government authorities.

Key Words:

Adjudication

Land use planning

Physical Development Plan



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



TABLE OF CONTENTS

1	INTRODUCTION.....	2
2	LAND REFORM PROGRAM IMPLEMENTATION	3
3	LAND USE POLICY.....	4
4	LAND USE POLICY IN LAND REFORM PROGRAM	5
4.1	Land Reform Implementation Plan	5
4.2	Implementation of Physical Planning Act with other Land related Laws	6
4.2.1	Local Government Act, 2016.....	7
4.2.2	Physical Planning Act, 2016.....	7
4.2.3	Land Act, 2016.....	8
4.2.4	Customary Land Act, 2016.....	9
4.2.5	Registered Land (Amendment) Act, 2016.....	11
4.2.6	Land Acquisition and Compensation Act, 2016	11
5	INTEGRATION OF LAND USE POLICY IN LAND REFORM PROGRAM.....	12
5.1	Adjudication of Land.....	12
5.2	Development Planning System.....	15
6	CONCLUSION AND RECOMMENDATION.....	18

TABLE OF FIGURES

Figure 1:	Part of Nancholi Registration Map in Blantyre City.....	13
Figure 2:	Sensitization of Chikwawa DEC and Full Council on District Physical Development Planning	14
Figure 3:	Sensitization meetings with Lundu and Ngabu Area Development Committees in Chikwawa.....	16
Figure 4:	Integration of Land Use Planning in Development Planning System.....	17



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



LAND USE POLICY; IMPLEMENTING PHYSICAL PLANNING ACT, IN THE CONTEXT OF MALAWI LAND REFORM PROGRAM

1 INTRODUCTION

In 2002, Malawi adopted the National Land Policy to ensure tenure security and equitable access to Land to facilitate the attainment of social harmony and broad based social economic development through optimum and ecologically balanced use of land and land based resources.¹ One of the major objectives of the policy is to extend land use planning strategies to all urban and rural areas. In order to achieve the aspirations of the policy, the government embarked on the reviewing of all land related laws in 2003 that have been enacted in 2016 and have been operation from 2018 in order to come up with a comprehensive legal and institutional framework for effective land stewardship that facilitates land based investments for economic growth and development of the country.

The enactment of the 10 land related laws provide the first step in the implementation of the National Land Policy that encompasses land use policy. The Physical Planning Act, 2016 is one of the laws that aim at implementing the land use policy in the context of implementation of the Malawi Land Reform Program. Government through its Land Reform Implementation Plan decided to take a pilot approach by testing the provisions in selected districts and traditional land management areas. The laws being tested include the Land Act, the Customary Land Act, the Land Survey Act are complete new laws while amendments to Registered Land Act and Land Acquisition Act are also being piloted. The other related laws to support the piloting include the Local Government (Amendment) Act, the Public Roads (Amendment) Act, the Forest (Amendment) Act and the Malawi Housing Corporation (Amendment) Act.

The paper focuses on the implementation of the Physical Planning Act as it relates to the granting, registering and titling of customary land under the Customary Land Act and other supporting laws in the context of effective implementation of the Malawi Land Reform Program in general. It will highlight processes taking place in the pilot districts of Phalombe Kasungu and Karonga led by civil society coalition and the pilot in Chikwawa District under the Shire Valley Transformation Project. The application of the Physical Planning Act will have to be done in an innovative way in order to ensure affective and timely implementation of all the other land related laws and indeed the Malawi Land Reform Program in general through the participatory land adjudication exercise and other land administration and management processes in order to address any challenges and gaps that may arise.

¹ Malawi National Land Policy, MLHS, MG, p.5



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



2 LAND REFORM PROGRAM IMPLEMENTATION

The Malawi Land Reform Implementation Plan was prepared in 2018 to provide guidance on implementation of the new land-related laws mainly focusing on piloting the new laws to draw lessons for scaling-up implementation. The new land-related laws are largely consistent with the principles of good land governance as contained in international governance instruments such as the Voluntary Guidelines on the responsible Governance of Tenure of land fisheries and forests in the context of national food security (VGGT), Land Governance Assessment Framework (LGAF), Principles for Responsible Agriculture Investment in Agriculture and Food Systems, among others. The Land Reform Implementation Plan defines intervention areas for the Land Reform Program in terms of priority activities and their implementation timelines and estimated budget. The Plan is expected to guide a harmonized implementation of land reform agenda in the country in accordance to the new land-related laws. Some of the main outcomes of the program are to enhance economic activities on land, increased agricultural productivity, improved land service delivery, and enhance government revenue collection.

Piloting the implementation of the land laws will provide lessons that will facilitate planning and smooth implementation of a national land reform program by assisting to identify possible bottlenecks in implementing the new land laws and guide the solution to the challenges and gaps, get input from the ground to improve on the quality of the subsidiary legislation, and get some feedback regarding the concerned laws themselves assisting in improving the procedures contained in the operational manual and guide the assessment of the likely cost for nationwide roll out. Piloting of the land laws is taking place in Karonga, Mzimba/Rumphi, Kasungu, Nkhotakota, Mchinji, Phalombe and Chikwawa to test the various aspects the laws are addressing. The pilots are being undertaken by government and its partners including the civil society coalition on land led by Land-net, Oxfam and Centre for Environmental Policy Advocacy (CEPA) operating in selected traditional authorities and group village headpersons of Phalombe, Kasungu and Karonga districts to specifically test customary land registration procedures.

During this piloting period the Government is expected to be building capacity at the central, regional, district and local levels, engage the general public, monitor and evaluate lessons being learned and preparing regulations and guidelines for effective implementation the land laws nationwide. Some of the activities taking place during the piloting period include adjudication and demarcation of Traditional Land Management Area boundaries, adjudication and demarcation of land parcel boundaries, establishment of customary land committees, establishment of land tribunals at TLMA and District levels and National Land Board including establishment of structures and processes under the Physical Planning Act, Land Surveys Act and Registered Land (Amendment) Act, Land Acquisition (Amendment) Act and



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



Local Government (Amendment) Act. Demarcation of the Traditional Land Management Areas has already taken place using high resolution satellite imagery with technical assistance from Regional Centre for Mapping and Resources. The demarcation maps have been sent to the respective traditional authorities through district councils for verification before certificates are issued.

Capacity building will be expected to be taking place in areas of establishment of Land Reform Implementation Unit to champion the reforms, strengthening finance management and procurement systems, recruitment of staff for the Ministry and pilot districts, training staff from the Ministry, local government authorities, and other relevant stakeholders and providing office infrastructure such as district land registries, procure equipment and improve on transport capacity at all levels among other interventions. Other activities include digitisation of existing land information and records in Deeds and Title Registries, improvement of storage of paper based lease documents and design and development of an integrated electronic Land Information Management System linking information from key departments.

For smooth implementation of the land reform during the pilot stages, constant public engagement will be required and to this effect a draft Communication Strategy is already in place to create deeper awareness and understanding of the land-related laws among various stakeholders and the general public through civic education and public awareness programs. Stakeholder participation is also required for successful implementation and the Ministry of Lands, Housing and Urban Development is working closely with the Ministry of Local Government and Rural Development, local government authorities, and other relevant government ministries and agencies, civil society organizations, development partners such as the World Bank, FAO, the EU, etc, the media and general public. The hand-over of land governance IEC materials especially on customary land registration by civil society coalition with assistance from the EU was held on 11th February 2019.

3 LAND USE POLICY

Land Use Policy seeks to create an enabling environment for efficient, effective and sustainable use and management of land and land based resources through provision of physical planning services at all levels in the country. The process to formulate the National Land Use Policy started in 2006 when the drafting of the land related laws was also being done by a Special Law Commission on Land Related Laws in order to provide policy guidance to the legal provisions. As provided for in the National Land Policy, the provision in the Town and Country Planning Act (CAP 23:01) of 1991 that required the Minister to declare some areas as Planning Areas was repealed. The repeal of the provision in Town and Country



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



Planning Act therefore means that the Physical Planning Act, 2016 now applies to all land of all types in the country. The National Land Use Policy is a result of recommendation in the National Land Policy that proposes that a comprehensive national land use and physical development and management policy should be developed and employed as a guide for rural and urban land use and development decisions.² A draft National Land Use Policy was finalized in 2016 and is about to be adopted by Government after a series of stakeholder consultative meetings and a review by a committee of principal secretaries of various ministries in 2019. The overall goal of the Malawi National Land Use Policy is to achieve orderly, coordinated, efficient and environmentally sustainable socio-economic development through enhanced sustainable use and management of land, environment and natural resources.³ The land use policy objectives were translated into the Physical Planning Act, 2016.

4 LAND USE POLICY IN LAND REFORM PROGRAM

4.1 LAND REFORM IMPLEMENTATION PLAN

In January 2018, the Ministry of Lands, Housing and Urban Development through its Land Reform Implementation Unit prepared a Land Reform Implementation Plan with the aim of guiding the implementation of the Land Reform Program in Malawi.⁴ The plan recognizes that the new land-related laws contain new areas that require piloting before rolling out. The Plan therefore outlines the necessary steps that need to be undertaken in order to conduct pilots for at least three years. Land use policy matters are expected to be some of the areas that the piloting will cover since most of the land laws have land use planning matters to be addressed in their implementation.

The budget for all proposed activities in the Land Reform Implementation Plan is estimated at US\$20.2 million. Financial commitments by the Malawi Government and her cooperating partners have been taken into account and a funding gap has been assessed at US\$13.9 million. Out of this funding gap the preparation of a national spatial framework is estimated to cost \$2,951,429, which represents about 28% of the identified funding gap. This cost does not include the cost of preparing district/regional and local physical development plans. This paper therefore attempts to provide innovative ways of going around this financial gap and capacity challenge by incorporating land use policy interventions in the existing legal provisions while piloting the implementation of all the land related laws and in particular the Customary Land Act in the pilot districts of Phalombe, Kasungu and Karonga. This will be compared

² Malawi National Land Policy, MLHS; p.31

³ Draft Malawi National Land Use Policy; p.11

⁴ Land Reform Implementation Plan, p.vii



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



with the pilot in Chikwawa district under the Shire Valley Transformation Project will follow the normal procedure of preparing land use plans first before granting and registering customary estates.

The Land Reform Implementation Plan recognizes that most rural centers in Malawi do not have land use plans to guide their future development and this poses a challenge and is a gap in the implementation of the land reform program because the lack of plans and failure to enforce land use plans where they exist has led to haphazard development on land, misuse and wastage of valuable land and resources for infrastructure services and leads to scattered human settlements.⁵ The challenge to plan and implement or enforce land use plans is exacerbated by inadequate capacity in institutions responsible for land management and development at all levels which has resulted into environmental degradation, conflict of land uses, unauthorized developments, misallocation of land, low quality physical structures, squatting and encroachment on reserved land and fragile areas. The lack of comprehensive land use planning and weak enforcement mechanisms has further resulted into illegal, unplanned, ribbon developments, illegal subdivision and change of land use, poor management and development of human settlements, bad agricultural practices, mismanagement of forests, poor conservation of catchment areas, misallocation of infrastructure and services, and development in environmentally fragile and disaster prone areas.

4.2 IMPLEMENTATION OF PHYSICAL PLANNING ACT WITH OTHER LAND RELATED LAWS

The Physical Planning Act, 2016 makes provision for the preparation of physical development plans at national, regional and local levels to provide a spatial framework for the coordination and implementation of programs and projects of development to assist with the development of an orderly hierarchy of urban and rural growth centers so as to contribute to a balanced pattern of development and economic use of resources and facilities.⁶

The last national spatial plan was prepared in 1986 while five districts of Karonga, Mzimba, Mchinji, Balaka and Machinga had prototype regional physical development plans prepared in 1987. A regional plan for the lakeshore of Lake Malawi that focused on tourism and protection of fishing areas was also prepared. Unfortunately, the implementation of these plans has not been very successful partly as a result of a weak capacity and institutional framework at all levels. As part of the implementation of the Malawi Land Reform Program, a national spatial plan will have be prepared to guide the preparation of regional and local plans. Apart from the major urban centers such as Lilongwe, Blantyre and Mzuzu that were declared as cities and statutory planning areas, most centers in the country have advisory local physical

⁵ Land Reform Implementation Plan, p.7

⁶ Physical Planning Act, 2016; p.14



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



development plans that assist local government authorities in the allocation of land only. The rest of the country does not have local land use plans that traditional authorities may use to guide them in the allocation and sustainable management of rural customary land.

4.2.1 Local Government Act, 2016

The Local Government Act (Cap 22:01)⁷, which is part of the 10 land related laws being piloted require that local government authorities should formulate, approve and execute district development plans in order to promote infrastructure and economic development within their areas of jurisdiction. The District Planning System gives guidance on how the district councils are supposed to prepare these district development plans through Social Economic Profiles of various sectors. It is therefore assumed that the District and Local Physical Development Plans should provide a spatial framework for the district, area and village development plans. The land governance structures of District Tribunal, Traditional Land Tribunal and Customary Land Committee provided in the Customary Land Act follows the district planning structures of the District Development Committee, Area Development Committee and Village Development Committee respectively. The Physical Planning Act provides for a District Planning Committee and an Urban Planning Committee for an area declared as Town, Municipality or City under the Local Government Act.

4.2.2 Physical Planning Act, 2016

The Physical Planning Act provides for the preparation of local physical development plans that can be in the form of urban structure plans, urban layout plans or urban civic plans and further provide for the preparation of simple layout plans or village land use plans to be approved by a planning committee of the district for use by customary land committees and traditional authorities as part of development control and enforcement in the use and occupation of customary land within Traditional Land Management Areas.⁸ It is worth noting that Physical Planning Act provides for exempted development where the erection of a building of a traditional nature is within the recognized boundaries of a village. However there are exceptions if the development is within a road reserve or land where development is prohibited. To this effect, the Act provides for a schedule of permitted development for such developments that would be exempted from development permission. Subdivision of land is however not exempted from grant of development permission from a responsible planning authority. Traditional authorities and customary land committees are therefore expected to comply with the provisions of the land use plan for

⁷ Local Government Act, Section 6

⁸ Physical Planning Act, Sections 33 to 43.



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



purposes of authorizing the use and occupation of customary land. This is in line with the Customary Land Act, 2016 where a customary land committee has to take into account the type of development, location and purpose as per the land use plan of the area for purposes of granting a customary estate.⁹

Physical Planning Act further provides that a person should not commence to develop or subdivide any land unless he has first obtained a grant of development permission except where the development or subdivision of land is permitted development.¹⁰ The Act further provides that the Land Registrar under the Registered Land (Amendment) Act, 2016 should not register any subdivision document unless that subdivision has a grant of development permission from a planning committee or Commissioner for Physical Planning. The Act also restricts the Commissioner for Lands under the Land Act, 2016 not to grant a lease of land for the purpose of development, unless the lease application is accompanied with a copy of a grant of development permission or a certificate from the responsible authority that such grant is not required for the development. The duties and responsibilities of the Land Registrar and Commissioner for Lands mentioned above are now being decentralized to the local government authority as District Land Registrar and customary land committees respectively in the new land related laws and in particular the Customary Land Act, 2016.

4.2.3 Land Act, 2016

The Land Act, 2016 provides for covenants to be prescribed in every lease granted. One of these covenants is to the effect that the lessee should not undertake any development of the leased land without first obtaining a grant of development permission from a Planning Committee or the Commissioner for Physical Planning where such grant is required under the Physical Planning Act, 2016.¹¹ The Land Act, 2016 further provide for user of land which gives powers to the Minister to regulate, manage or control the use of land but in consultation and with regard to the views of the Minister responsible for Physical Planning.¹² In regulating, managing or controlling the use of land, the Minister responsible for Lands may order, direct or instruct the method of cultivation and growing of crops and keeping livestock, the maintenance of proper drainage, fencing, hedging, modes of access, preservation and protection of source, course and banks of streams and good management and conservation of soil, water, woodland, pasture and other natural resources on the land. This provision in the Land Act is in line with sustainable land use

⁹ Customary Land Act, Section 22

¹⁰ Physical Planning Act, Section.54

¹¹ Land Act, 2016, Section 24

¹² Land Act, Section 41



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



policies and principles, natural resource conservation and indeed the provisions of the Physical Planning Act, 2016.

4.2.4 Customary Land Act, 2016

The Customary Land Act is a new piece of legislation that has been introduced to provide for the management and administration of customary land in a decentralized, transparent and democratic manner through the introduction of customary land committees at group village headperson level and land tribunals that are gender balanced. The Customary Land Act, 2016 repeals the Customary Land (Development) Act, (Cap 59:01) and the Local Land Board Act (Cap 59:02) that have been applicable only in the western part of Lilongwe District. The key elements in the Act are the introduction of the system of allocating, registering and titling of customary land as advocated by the National Land Policy to ensure that there is equitable access to land and security of tenure through transparent, participatory and accountable land administration and management mechanisms.

The Customary Land Act, 2016 has several land use policy related provisions that have a bearing on the implementation of the Physical Planning Act, 2016. The Act provides for the definition and demarcation of customary land within the boundaries of a Traditional Land Management Area where the Traditional Authority is issued with a certificate of customary land.¹³ One of the functions of the customary land committee is to take into regard the principle of sustainable development in the management of customary land and the relationship between land use, natural resources and the environment.¹⁴ The customary land committees are supposed to be technically assisted by a land clerk being the secretary and among his qualifications, is supposed to be competent in basic map preparation and land use planning in order to be able to prepare land use plans in accordance with the Physical Planning Act, 2016 and advice by the Commissioner for Physical Planning through the local government authority.¹⁵

The Customary Land Act further provide for the declaration of any customary land to be hazardous land if the land is likely to be a danger to life or lead to land degradation or environmental destruction.¹⁶ The identification of such land can be done through a land use planning process and such land may include wetlands and offshore islands in lakes and other water bodies, waste dumping sites, river banks, steep slopes, fragile or any other land of environmental significance. In its determination to grant customary estates to persons, a customary land committee is supposed to consider the amount and location of the

¹³ Customary Land Act, Section 3.

¹⁴ Customary Land Act, Section 6

¹⁵ Customary Land Act, Section 8

¹⁶ Customary Land Act, Section 19



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



piece of land being applied for including its purpose for which the applicant intends to use the land in accordance with the development or land use plan of the area¹⁷ and such grants are subject to conditions that may include building permissions and compliance with rules and by-laws relating to the use and occupation of the land.¹⁸

The provisions outlined above assume that the customary land committee will be guided by a land use plan of the area but as mentioned above most customary land in rural areas is not planned. There is need therefore to incorporate land use planning elements during adjudication of boundaries and interest in the land for purposes of granting of customary estates. In deciding whether to grant a customary estate, a land committee is supposed to consider whether the land is available for the use proposed by the applicant and whether the size of the land applied for and its location are suitable for the proposed use and if not satisfied be able to refuse.¹⁹ The first step for adjudication is where the boundaries of a Traditional land Management Area are demarcated and agreed upon and the Commissioner for Lands issues a certificate of customary land to the traditional authority of the area and register it. This process of adjudicating and demarcating traditional land management areas has already been done throughout the country.

A Traditional Land Management Area is supposed to be divided into land which is occupied and used or available for occupation and use on a communal or public basis, land which is occupied or used by an individual or family or a group of persons under customary law or land which may be available for communal or individual occupation and use through allocation by a land committee.²⁰ In determining such land to be communal customary land, the land committee may easily be guided by a land use plan of the area or through the advice and guidance from the land clerk or local government authority through its planning committee or advice from the officials under the Commissioner for Physical Planning.

Customary Land Act provides for area adjudication, district adjudication and spot adjudication.²¹ The local government authority is responsible for district adjudication while land committees are responsible for area and spot adjudication on recommendation from a local government authority. Area adjudication can be applied to the whole of or a defined portion of land within the Traditional Land Management Area for grants of customary estates and in all practical terms the area under the group village head person and customary land committee and a village development committee. A notice is supposed to be published

¹⁷ Customary Land Act, Section 22

¹⁸ Customary Land Act, Section 27

¹⁹ Customary Land Regulations; Rules 31 & 34

²⁰ Customary Land Act, Section 13 and 14

²¹ Customary Land Act, Sections 36 to 43



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



and posted in a conspicuous place specifying approximate area of the land to be adjudicated, requiring persons who claim any interest in the land to attend a meeting to submit claims and requiring persons who claim to occupy land within the area to mark or indicate the boundaries of the land. Based on the claims adjudicated, the land committee will then prepare a provisional demarcation map and adjudication record which is supposed to be posted conspicuously within the area for thirty days in order to receive appeals. If there are no appeals lodged to the customary land tribunal within the thirty days, the provisional adjudication record and demarcation map becomes a final record and map ready for registration of the individual parcels. The final adjudication map therefore is expected to show all public and private land in the area.

4.2.5 Registered Land (Amendment) Act, 2016

The Registered Land (Amendment) Act, 2016 provides for title registration throughout the country for all land categories, including customary land. All land in Malawi is now subjected to registration for purposes of determination of ownership. This is a process to have only one type of land registration system and move away from the Deeds Registration system. The advantage of a title registration system is that it is simple cheaper, secure and safe. The Registration Districts also correspond to areas of Local Government Authority. Registration districts are now decentralized and reliance is no longer placed on the Minister to declare registration districts. Among other things, land registers shall indicate the class of land that is to be registered in order to prevent the unwise disposition of customary land converted to private land. The Registered Land (Amendment) Act provides for consent of land committees to be obtained in the dealings with any customary land. To this effect the district land registrar will only register a customary estate or a lease of customary land unless he has written consent of a land committee and as outlined above the land committee would have first considered land use policy issues first before granting such land.²² In order to address land use planning policy issues, public land classified as unallocated customary land shall not be acquired, nor easements or profits be acquired by prescription.²³ This will ensure that land reserved for natural resource conservation and for public utility are protected for benefit of the community.

4.2.6 Land Acquisition and Compensation Act, 2016

Where land is already claimed and possibly granted and registered under the Customary Land Act and the Registered Land Act, the provisions of the Land Acquisition and Compensation Act, 2016 will apply.

²² Registered Land (Amendment) Act; 2016, Section 12.

²³ Registered Land (Amendment) Act; Section 134



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



One of the objectives of the Land Acquisition and Compensation Act is to authorize and empower the Minister to acquire private land in the interest of the general public and the acquisition can be compulsorily or by agreement after negotiation in so far as appropriate compensation is paid based on valuation assessment that takes into account loss of land, loss of structure, loss of business, cost of relocation, loss of goodwill, cost of professional advice, nuisance or loss of reduction of tenure or disturbance.²⁴ However, where such land is within a road reservation under the Public Roads Act or is a declared hazardous land under the Customary Land Act or any other law, it shall be acquired without compensation being paid.

5 INTEGRATION OF LAND USE POLICY IN LAND REFORM PROGRAM

5.1 ADJUDICATION OF LAND

The Customary Land Act, 2016 suggests that any amendment or correction to the adjudication record or demarcation map shall only occur upon an appeal by an aggrieved person.²⁵ Land use matters are not explicitly outlined in the adjudication process. A person to appeal to a land tribunal is expected to have direct interest in land that has land ownership or boundary dispute. The adjudication process in the Customary Land Act is based on the provisions of the Adjudication of Title Act (Cap 58:05). The Act was not reviewed as part of the land related laws and does not explicitly incorporate land use policy matters.

The effect of the absence of land use planning in adjudication process is clearly demonstrated in the adjudication and registration maps of unplanned areas of Blantyre City such as Mbayani and Nancholi where land for public use including access roads and stream reserves were not taken into consideration in several areas when registering the land parcels that were claimed.

²⁴ Land Acquisition and Compensation Act; Section 3 and 10

²⁵ Customary Land Act, 2016; Section 40



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



Figure 1: Part of Nancholi Registration Map in Blantyre City



Source: Blantyre Land Registry, Department of Lands and Valuation

The land clerk has jurisdiction to determine all claims made under the adjudication process on behalf of the land committee. However the whole process is not supposed to be done by one person as the Adjudication of Title Act provide for an adjudication officer, demarcation officer, survey officer and recording officer but no land use planner. As much as the Land Clerk is supposed to be an officer trained



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



in land tenure management issues and competent in basic map preparation and land use planning and be able to prepare land use plans in accordance with the Physical Planning Act and provide advice to the land committee,²⁶ he may not be able to manage the whole process alone taking into consideration his level of academic qualification, his level of official grade in the public service and the amount of work expected. This implies that the adjudication process requires a team of land and natural resources management experts in order to meet the objective of the National Land Policy of attaining social harmony and broad based social economic development through optimum and ecologically balanced use of land and land based resources as expounded in the land laws outlined above.

Figure 2: Sensitization of Chikwawa DEC and Full Council on District Physical Development Planning



Source: Physical Planning Department, January 2019

The local government authority may have to provide technical advice and guidance to the land committee on how best to deal with land use planning issues in line with advice given by the Commissioner for Lands²⁷ or the Commissioner for Physical Planning.²⁸ The adjudication process is supposed to be as participatory as possible just like land use planning is supposed to be participatory to include members of the community themselves. Customary Land Regulations, 2018 require that a land committee should undertake community sensitization meetings highlighting the advantages and benefits of as well as issues to be considered pertaining to land use planning, demarcation, survey, registration and proper

²⁶ Customary Land Act; Section 8(2)(c)

²⁷ Customary Land Act, Section 6

²⁸ Physical Planning Act; Section 5(1)(e) and (f)



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



administration and management of customary land before adjudication and demarcation of customary land is done.²⁹

Officers at the area and village development committee level in natural resources management such as front line officers in forestry, agricultural extension, community development, water resources among others are expected to be incorporated in the team or be consulted in the adjudication process so that the base map highlights key natural resources that may require protection and management frameworks such as wetlands, fragile lands, hazardous lands and existing and planned infrastructure and services³⁰ so that customary land claimants may appreciate how far the land they will be claiming interest has land use issues to be taken into consideration. The provisional adjudication record and map in the pilot areas of Phalombe, Kasungu and Karonga and any other areas where land use plans are not available should first be submitted to the planning committee for grant of development permission since subdivision of land amounts to development as defined in the Physical Planning Act, 2016. The provisional adjudication map will therefore be declared a final record and map for registration purposes after approval of the planning committee.

The District Land Registrar will only register and issue certificates offered by customary land committee to land claimants after the planning committee is satisfied and approved the final adjudication map that has taken into account land use policy matters. As the district land registry is being established at the local government level during the piloting period, a district planning committee should also be established approve the adjudication map as the de facto land use plan of the area in the absence of a comprehensive land use plan of the area.

5.2 DEVELOPMENT PLANNING SYSTEM

At the national level, the Malawi Growth and Development Strategy (MGDS) prepared under the Ministry of Finance and Economic Development is a blue print for socio-economic development planning of the country. The National Physical Development Plan is supposed to provide a spatial framework for the implementation of the MGDS. At the local level, the district planning system under Ministry of Local Government and Rural Development provides for three levels of development planning. A district development plan at local government level, an area development plan at traditional authority level and a village development plan at a group village level. These socio-economic development planning structures coincide with the land administration and management structures of a district tribunal or district planning

²⁹ Customary Land Regulations; Rule 17

³⁰ Customary Land Regulations; Rule 22



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



committee, customary land tribunal and a customary land committee. It is expected therefore that sector development requirements at the district represented by a district development plan, would be known by these development committees at area and village levels.

Land is the most basic of all resources available for social and economic development³¹ and it is one of the factors of development. Its proper administration and management therefore cannot be separated from socio-economic development planning since land based investments and resources are key to the development of the country and reduction of poverty through its sustainable productive use.

The adjudication map should in the absence of a comprehensive physical development plan provide a spatial representation of the social economic development plan. The adjudication record of claims of the land should also have land use information so that persons that are claiming such land are aware of the implication as to what extent the land can be used for what purpose. In the absence of a proper local physical development plan, only land that has no land use issues should be registered as customary estates or land use conditions attached to them to be complied by registered owners when occupying and using the land. The rest of the land although claimed or occupied by persons but is required for natural resource conservation, public utility or for community purposes such as grave yards, community forests or grazing should be left as public customary land to fall under the class of unallocated customary land.

Figure 3: Sensitization meetings with Lundu and Ngabu Area Development Committees in Chikwawa



Source: Physical Planning Department, January/February 2019

The process to prepare Chikwawa District Physical Development is involving the district development planning structures. The Director of Planning and Development and his district team is working with physical planning experts from the Ministry of Lands, Housing and Urban Development to prepare the district spatial plan that will facilitate the expeditious implementation of the Shire Valley Transformation

³¹ Malawi National Land Policy; p.iv



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



Project which is proposing the consolidation of land parcels for effective irrigation farming. After sensitizing and consulting the District Executive Committee technical comprising sector directorates and civil society organizations and the full District Council which included the Development Committee of the council, the team of physical planners met all the eleven (11) area development committees in the 11 traditional land management areas to sensitize and consult the members on the need of the land use plan and the district land use planning process.

Figure 4: Integration of Land Use Planning in Development Planning System



Source: Adapted from District Development Planning Handbook, 1998



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



6 CONCLUSION AND RECOMMENDATION

The Malawi Land Reform Program implementation process is in progress with the coming into force of the 10 land related laws in 2018 that were enacted in 2016. Malawi has adopted a pilot approach in selected districts to the implementation of the land laws to test the applicability of various key aspects of the laws before rolling out throughout the country. There are capacity and resource gaps to implement the land reform program. The pilot approach is therefore providing lessons on how best to address the challenges being met and envisaged in order to implement the land reform program in full. Piloting will also provide room for resource mobilization and capacity building during this period. One area that has already been identified to have a resource gap is of land use planning that requires the preparation of a national spatial plan to guide district and local land use planning in the implementation of the land reform program. The effect of not filling the gap is that the land laws will not be seen to meet their objectives in full. The innovative incorporation of land use planning aspects in the customary land adjudication process is expected to address any concern that would legally affect the registering and titling of customary land for purposes of ensuring security of tenure that is expected to contribute towards economic growth and development of the country through productive use of land through commercialized agriculture that would lead to reduction of poverty among the majority of the population leaving in rural areas and in particular women.



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



REFERENCES

1. Malawi Government, Adjudication of Title Act, 1971
2. Malawi Government, Customary Land Act, 2016
3. Malawi Government, Customary Land Regulations, 2018
4. Malawi Government, Land Act, 2016
5. Malawi Government, Malawi National Land Policy, 2002
6. Malawi Government, MLGRD, District Development Handbook, 1998
7. Malawi Government, MLHUD, Land Reform Implementation Plan; Piloting New Land Laws in Malawi, 2018
8. Malawi Government, National Physical Development Plan, 1987
9. Malawi Government, Physical Planning Act, 2016
10. Malawi Government, Registered Land (Amendment) Act, 2016