



# Catalyzing Innovation

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

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## INTRODUCTION

- Goal of Malawi National Land Policy, 2002 is to ensure tenure security and equitable access to Land to facilitate attainment of social harmony and broad based social economic development through optimum and ecologically balanced use of land and land based resources.
- One of major objectives of the Land Policy is to extend land use planning strategies to all urban and rural areas by preparing a national land use policy and land use plan (s).
- Almost all key land related laws have land use policy provisions that need to be taken into account in implementation of land reform program.
- The Physical Planning Act is the principle law dealing with land use policy matters in the implementation of Malawi Land Reform Program.



## INTRODUCTION

- Malawi has taken a pilot approach to the implementation of the land laws to test applicability of provisions, learn lessons, identify gaps, challenges and solutions for national roll-out.
- Most rural areas do not have land use plans but land use policy matters need to be incorporated in the granting, registering and titling of customary land under the land laws.
- The pilot customary land registration project in 3 districts by the civil society coalition is not preparing land plans. while
- The Shire Valley Transformation Project in Chikwawa is first preparing land use plans before consolidation and registration of customary land for commercialized irrigation farming by local communities.
- Lessons are expected to learned from the two approaches for rolling out of land reform program nation wide.



## LAND REFORM PROGRAM IMPLEMENTATION

- Malawi Land Reform Implementation Plan prepared in 2018
- Provides guidance on harmonized implementation of land-related laws focusing on piloting them to draw lessons for scaling-up.
- Defines intervention areas for the Land Reform Program in terms of priority activities, their implementation timelines and budget.
- Identifies possible bottlenecks to guide solutions to challenges and gaps.
- To get input from the ground in order to improve on the quality of subsidiary legislation (regulations and guidelines)



## LAND REFORM PROGRAM IMPLEMENTATION

- Piloting of implementation of land laws is taking place in Karonga, Kasungu, Phalombe and Chikwawa districts to test processes for registration and titling of customary land with support from the civil society and cooperating partners.
- Capacity at all levels is expected to be built during this period.
- Lessons being learned will be monitored and evaluated to inform preparation of regulations and guidelines.
- Major piloting activities include participatory adjudication and demarcation of land parcel boundaries, establishment of customary land committees, land tribunals including establishment of structures and processes provided in all land laws,
- Recruitment and deployment of land clerks, key staff at all levels and establishment of district land registries and offices.



## LAND REFORM PROGRAM IMPLEMENTATION

- Other activities include procurement of equipment, digitization of land information and records, improvement in storage of land records and development of an integrated land information system.
- Constant public and stakeholders engagement through a comprehensive IEC and public awareness programs.
- Stakeholder participation by working closely with MDAs, local government authorities, CSOs, development partners, the media and the general public.



## LAND USE POLICY

- Land Use Policy seeks to create enabling environment for efficient, effective and sustainable use and management of land and land based resources at all levels in the country.
- The goal is to achieve orderly, coordinated, efficient and environmentally sustainable socio-economic development through enhanced sustainable use and management of land, environment and natural resources.
- Process of formulating the Malawi National Land Use Policy started when of land laws were being prepared to provide policy guidance to the legal drafting.
- Provision in Town and Country Planning Act, 1991 that required Minister to declare some areas as Planning Areas was repealed making all types of land to be subject to land use planning and regulation under Physical Planning Act, 2016.
- Malawi Land Use Policy is ready for adoption by Government in 2019.





## LAND USE POLICY CHALLENGES AND GAPS

- Land use policy matters expected to be addressed in the pilot implementation of the Land Reform Program since almost all key land laws have land use planning provisions.
- Budget for all proposed activities in the Land Reform Implementation Plan is estimated at US\$20.2 million.
- Financial commitments by Government and cooperating partners has a funding gap of US\$13.9 million.
- Out of the gap, preparation of a national land use plan is estimated to cost \$2,951,429, which is about 28% of the gap excluding the cost of preparing district/regional and local physical development plans.
- This financing gap is a challenge that needs to be addressed through innovative ways during piloting of land laws by incorporating land use matters in the implementation of all land laws.



## LAND USE POLICY CHALLENGES AND GAPS

- Most rural areas in Malawi do not have land use plans to guide their future development and where they exist are not enforced.
- Lack of comprehensive land use planning and weak enforcement mechanisms because of inadequate capacity in institutions responsible for land management and development at all levels .
- Resulted into illegal, unplanned, ribbon developments, unauthorized 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



## IMPLEMENTING PHYSICAL PLANNING ACT

- **Physical Planning Act** 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 for a balanced pattern of development and economic use of resources and facilities.
- Last national land use plan was prepared in 1986 with five districts plans of Karonga, Mzimba, Mchinji, Balaka/Machinga including a regional plan for the lakeshore of Lake Malawi.
- Implementation of these plans has not been very successful partly because of low capacity and weak institutional frameworks.



## IMPLEMENTING PHYSICAL PLANNING ACT

- The Act provides for the preparation of local physical development plans that can be in form of urban structure plans, urban layout plans or urban civic plans.
- Act further provide for preparation of simple layout plans for use by customary land committees and traditional authorities as part of development control and enforcement in use and occupation of customary land.
- Act provides for exempted development where the erection of a building of a traditional nature is within the recognized boundaries of a village.
- Development within a road reserve or on land where development is prohibited and not exempted.



## IMPLEMENTING PHYSICAL PLANNING ACT

- Traditional authorities and customary land committees to comply with land use plan in authorizing use and occupation of customary land.
- No person to commence development or subdivide any land unless with a grant of development permission from responsible authority.
- Land Registrar not to register any subdivision document unless has a grant of development permission.
- Commissioner for Lands not to grant a lease of land unless lease application is accompanied with a copy of a grant of development permission.



## LAND USE POLICY IN OTHER LAND LAWS

- **Local Government (Amendment) Act, 2016** requires that local government authorities formulate, approve and execute district development plans in order to promote infrastructure and economic development within their areas of jurisdiction.
- District Planning System gives guidance on how district councils are supposed to prepare district development plans.
- Land governance structures of District Tribunal, Traditional Land Tribunal and Customary Land Committee mirror district planning structures of District Development Committee, Area Development Committee and Village Development Committee respectively.



## LAND USE POLICY IN OTHER LAND LAWS

- **The Land Act, 2016** provides for covenants to be prescribed in every lease being granted.
- One of the covenants is that lessee should not undertake any development without first obtaining a grant of development permission from planning authority.
- Minister of Lands to regulate, manage or control use of land in consultation and with regard to views of Minister responsible for Physical Planning.
- Minister may order, direct or instruct method of cultivation and growing of crops and keeping livestock, 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 land.



## LAND USE POLICY IN OTHER LAND LAWS

- **Customary Land Act, 2016** provides for the management and administration of customary land in a decentralized, transparent and democratic manner.
- Introduces system of granting, registering and titling of customary land to ensure equitable access to land and security of tenure.
- One of functions of 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.





## LAND USE POLICY IN OTHER LAND LAWS

- Customary land committee has to take into account the type of development, location and purpose as provided for in land use plan of the area for purposes of granting a customary estate.
- Land clerk is supposed to be competent in basic map preparation and land use planning.
- Any customary land can be declared hazardous land if it is likely to be a danger to life or lead to land degradation or environmental destruction.
- Such hazardous 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 and may not be granted as customary estates.



## LAND USE POLICY IN OTHER LAND LAWS

- Customary Land Act provides for district, area and spot adjudication.
- Piloting has adopted systematic area adjudication for grants of customary estates.
- Persons will claim interest in the land by submitting claims and marking or indicating boundaries of the land on a map.
- Based on the claims adjudicated, land committee a provisional demarcation map and adjudication record is prepared and posted within the area to receive appeals.
- If there are no appeals to the customary land tribunal, provisional adjudication record and demarcation map becomes a final record and map ready for registration.



## LAND USE POLICY IN OTHER LAND LAWS

- **Registered Land (Amendment) Act** provides for Title Registration throughout the country for all land categories.
- Registration districts decentralized to correspond to areas of Local Government Authority.
- District land registrar only to register a customary estate or a lease of customary land unless he has written consent of a land committee.
- Unallocated customary land shall not be acquired, nor easements or profits be acquired by prescription to ensure that land reserved for natural resource conservation and for public utility is protected for benefit of the community.



## LAND USE POLICY IN OTHER LAND LAWS

- **Land Acquisition and Compensation Act, 2016** to apply on all categories of land.
- One of the objectives of the Act is to authorize and empower the Minister to acquire private land in the interest of general public.
- Acquisition can be compulsorily or by agreement after negotiation.
- Appropriate compensation is paid based on valuation assessment.
- Assessment to take 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.
- Where such land is within a road reservation or is declared hazardous land under the Customary Land Act or any other law, it shall be acquired without compensation being paid.



## PILOTING OF LAND LAWS

- Civil society coalition comprising Land-Net, Oxfam and CEPA are piloting customary land registration and titling in three districts of Phalombe in the South, Kasungu in the centre and Karonga in the North.
- Piloting is testing registration of customary land in matrilineal society of Phalombe, in Kasungu with leased farms and estates and patrilineal society in Karonga.
- Customary land committees have been established and land clerks deployed.
- Sensitization and training sessions on key provisions land laws have taken place.
- Adjudication of land parcels is taking place in Phalombe.
- Land committees and stakeholders have been sensitized and trained to incorporate land use planning considerations in adjudication exercise in the absence of comprehensive land use plans.



## PILOTING LAND LAWS

- Shire Valley Transformation Project is piloting implementation of land laws in Chikwawa District.
- Component 2 of the project is on preparing land-based investments and natural resources management support and specifically preparing land-governance for securing land tenure based investments.
- To involve acquisition of land for irrigation water canals which is expected to affect existing land use patterns.
- Pilot adjudication, and consolidation of land parcels to form farmer cooperatives for registration of land as a group.
- Land use plans at district and local levels will first be prepared to guide project and other land based investments as provided in Physical Planning Act.



## PILOTING LAND LAWS

- Sensitization meetings on land laws and Physical Development Planning process with DEC took place on 16<sup>th</sup> Jan. while that with Full Council members on 17<sup>th</sup> January, 2019.
- Sensitization meetings with ADCs for all 11 Traditional Land Management Areas done from 30<sup>th</sup> Jan. to 4<sup>th</sup> Feb. 2019.
- Work plan and budgeting for physical development planning done and agreed upon
- Physical development planning preparatory work including training of officers to be involved in the land use planning exercise being done up to end of February 2019.



## PILOTING LAND LAWS

- Land use planning activities include;
  - literature review including old district social economic profiles (SEPs),
  - field data collection (both socio-economic and geospatial),
  - updating of base maps (based on existing satellite imagery,
  - preparing land use maps
  - preparing draft land use plans.
  - conducting stakeholder consultative meetings for comments
  - Preparing final land use plans
  - deposit of plan for inspection and endorsement by District council by end of May 2019





## CHALLENGES AND GAPS

- Land use policy requirements are provided in almost all the key land laws being piloted however;
  - Land Reform Program budget has a financial gap.
  - Most customary land in rural areas is not planned.
  - Where land use plans exist they are old and out of date.
  - There is lack of adequate capacity to prepare land use plans and to effectively implement them.
  - Weak enforcement mechanisms as a result of capacity gaps at all levels including shortage of trained staff and equipment.
  - Physical planning services are not yet fully decentralized to local government authorities.



## CHALLENGES AND GAPS

- Land use matters are not explicitly outlined in land adjudication process in Customary Land Act and in the Adjudication of Title Act
- Effect of unclear land use planning process in adjudication process is demonstrated in the adjudication and registration maps of unplanned areas of Blantyre City where land for public use including access roads and stream reserves were not taken into consideration in several areas when registering land parcels that were claimed.
- A good example is how land in Mbayani and Nancholi under absentee private land lords has been subdivided and developed by persons that claimed prescriptive land rights through land adjudication.



## CHALLENGES AND GAPS

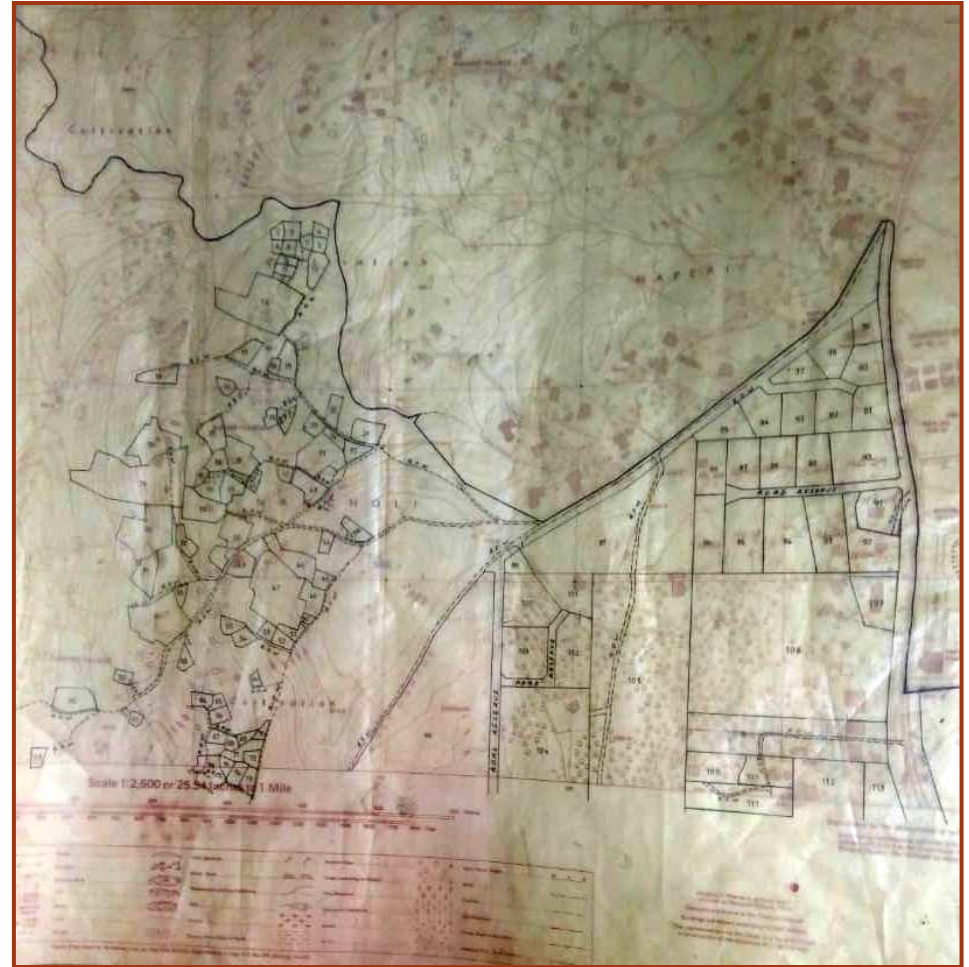
### PART OF NANCHOLI REGISTRY MAP IN BLANTYRE CITY

#### LEFT SIDE

Adjudicated and registered land parcels  
without land use planning consideration

#### RIGHT SIDE

Adjudicated land parcels in a layout plan  
along road leading to  
Chikwawa District





## SOLUTIONS TO CHALLENGES AND GAPS

- Rules 17 of Customary Land Regulations provide for land committees to be sensitized on advantages and benefits land use planning, demarcation. Surveys, registration and proper administration and management of customary land.
- Rule 22 provides for land clerk to prepare a base map and a land use plan for purposes of Adjudication and Demarcation of Customary Land and ensure that the map and plan highlights key natural resources and infrastructure and services that may require protection and management.
- In Phalombe, land committees have been trained and sensitized on how best to incorporate land use planning considerations in adjudication exercise in absence of a comprehensive land use plan of the area.
- In Chikwawa, Council members, DEC and Area Development Committees have been sensitized on including land use policy aspects in their socio-economic development plans and preparation process of district and local land use plans.



## SOLUTIONS TO CHALLENGES AND GAPS

- Land Clerk is working with other front line sector officers in community development and natural resources conservation as a team with supervision from land surveying and physical planning officers of the Ministry to make sure that socio-economic development and land use planning aspects are incorporated in the customary land adjudication process.
- Provisional adjudication record and map in the pilot areas of Phalombe, Kasungu and Karonga where land use plans have not been prepared will be submitted to the planning committee for grant of development permission as the de facto land use plan of the area.



## SOLUTIONS TO CHALLENGES AND GAPS

- DPD in Chikwawa District his technical team and area development committees are working with physical planners from the Ministry to prepare district physical development plan and local land use plans that will facilitate the expeditious implementation of SVTP.
- Land management is therefore being integrated with the development planning system since land is one of the factors of production.
- Land use plans will be providing a spatial framework for the implementation of development plans of the districts and areas.
- Other cooperating partners are being engaged to support land use planning activities in the Land Reform Implementation Plan.



## SOLUTIONS TO CHALLENGES

### INTEGRATING LAND USE PLANNING AND DEVELOPMENT CONTROL IN SOCIO-ECONOMIC DEVELOPMENT PLANNING SYSTEM





## CONCLUSION AND RECOMMENDATION

- Land Reform Program Implementation Plan has identified lack of land use policy commitment as a gap in the effective land reform program implementation.
- The gap is in a form of financial as well capacity at all levels to incorporate land use planning provisions in the land laws as provided for in the Physical Planning Act and the other laws.
- The impact of the financial and capacity challenges being faced is that the piloting of the implementation land laws as part of the land reform program would not be according to legal provisions and lessons would not be fully learned for national roll out if innovative ways are not applied in the pilots.





## CONCLUSION AND RECOMMENDATION

- Incorporating land use planning aspects in the piloting of customary land registration through a participatory adjudication exercise is one of the solutions to address the financial and capacity challenges being faced during the pilot phase of the Malawi Land Reform Program.
- Customary land parcels will be able to registered as customary estates while community and reserved land will be registered as public unallocated land by using the adjudication map which will have included land use policy matters.
- This innovative participatory process will not compromise on the legality of registering and titling such land parcels in the absence of comprehensive physical development plan.
- The two pilot approaches being taken by the Oxfam led civil society coalition and the SVTP will provide valuable lessons for national roll-out.