

# **IMPROVING LAND SECTOR GOVERNANCE IN MALAWI**

## **Implementation of the Land Governance Assessment Framework**

**Compiled by**

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# ACRONYMS

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ADR	Alternative Dispute Resolution
DPDP	District Physical Development Plans
FAO	Food and Agricultural Organization
FIG	International Federation of Surveyors
GDP	Gross Domestic Product
GOM	Government of Malawi
GNI	Gross National Income
GPS	Geographical Positioning System
ICT	Information and Communication Technology
IIED	International Institute for Environment and Development
LGAF	Land Governance Assessment Framework
LGI	Land Governance Indicator
MGDS	Malawi Growth and Development Strategy
MHC	Malawi Housing Corporation
NGO	Non-Government Organization
NCLDS	Neo-Customary Land delivery System
NPDP	National Physical Development Plan
NSO	National Statistical Office
QVR	Quinquennial Valuation Roll
SVR	Supplementary Valuation Roll
THAs	Traditional Housing Areas
USD	United States Dollar
USP	Urban Structure Plans

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# EXECUTIVE SUMMARY

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## **Country Context**

Malawi is a sub-Saharan African country located south of the equator. It is bordered to the north and northeast by the United Republic of Tanzania; to the east, south, and southwest by the Republic of Mozambique; and to the west and northwest by the Republic of Zambia. The country is 901 kilometres long and 80 to 161 kilometres wide. The total area is approximately 118,484 square kilometres of which 94,276 square kilometres is land. The remaining area is mostly composed of Lake Malawi, which is about 475 kilometres long and delineates Malawi's eastern boundary with Mozambique.

The economy of Malawi is based primarily on agriculture, which accounts for 36 percent of the Gross Domestic Product (GDP). The country's major exports are tobacco, tea, and sugar and account for approximately 85 percent of Malawi's domestic exports. As an agrarian economy, Malawi has demonstrated increased potential for sustained and high levels of economic growth and poverty reduction through increased productivity in the agricultural sector.

## **Land Sector Context**

Land is a key asset for economic growth and development of Malawi. The Malawi economy continues to rely heavily on agriculture and natural resources for a significant share of GDP (>40%), national food needs, employment, and export revenue. At the same time agriculture, natural resource use and other land-based activities are major sources of livelihoods for the majority of the population. Average land holding size per household in Malawi is estimated at 1.2 hectares while the average land per capita is 0.33 hectares (GOM, 2010c). Per capita arable land holdings have been declining from about 0.4 hectares in 1970 to about 0.2 hectares in 2007, partly due to high population growth rate that has led to intergenerational fragmentation of land holdings. In addition, per capita land holdings are highly skewed, with the poor holding only 0.23 hectares per capita compared to the non-poor that hold 0.42 hectares per capita. The small land holding sizes shows the declining trends in per capita cultivatable land in Malawi.

The 2008 Population Census showed that the population of the country was 13, 077, 160 people, having increased at an average annual rate of 2.8 percent from 9,934,000 in 1998 (National Statistical Office, 2008a). Population density was therefore estimated at 139 people per square kilometre, having increased from 105 people per square kilometre in 1998. 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.

## **Scope of the Land Governance Assessment Study**

The study was instituted by the Malawi Government to assess status of Land Governance in Malawi using the Land Governance Assessment Framework (LGAF). The LGAF groups land sector issues into five thematic areas and these are: Legal and Institutional Framework; Land use planning, Management and Taxation; Management of Public Land; Public Provision of Land Information; and Dispute Resolution and Conflict Management. The first step in study involved individual expert analyses of more than half the LGAF dimensions based on secondary information. The second step in the implementation of the LGAF was the gathering of Panels of Experts in various areas of the land sector. Experts met for a day as a panel to assess and discuss a specific set of land governance indicators and dimensions and to provide a collective and motivated ranking for each indicator. The LGAF report for Malawi has been prepared following these steps and synthesizes the findings and recommendations from the steps in the process based on the five thematic areas.

## **Key Findings and recommendations**

### **Legal and Institutional framework**

The assessment has shown that most rural land (>80%) is under customary tenure where the rights of the holders though legally recognized are not protected by the same law. Customary land is governed by customary law which varies from area to area. A number of studies have shown clear evidence of tenure insecurity for some groups such as women and children and the land continues to be fragmented to unsustainable levels with population growth. As a contribution to the already initiated policy reform, a number of policy recommendations have been proposed in this assessment. Firstly, the government should expedite the passing of the new land law so that the proposed policy, legal and institutional reforms can be implemented. For example, under the new law customary land can be titled and registered to guarantee tenure security. The reforms should harmonise land laws with customary law and inheritance issues to improve security of tenure and property rights. Emphasis needs to be put on securing land rights of the poor in rural and urban areas. Secondly, government should strengthen local institutions with responsibility for managing land rights and related disputes at national, district and local level. There is need for civil society organizations to carry out advocacy and sensitization on the land policy targeting government, donors, parliament and the community so that the policy implementation can receive adequate attention in MGDS prioritization and funding.

This study has also shown that full legal recognition of urban land tenure is for most people hampered by some obstacles which include rapid urban growth, the requirements and costs of formal title registration and weak land administrations capacity. Resulting of which is proliferation of informal settlements and slums with insecure land rights and poor living and



environmental conditions. The study has therefore put forth a number of recommendations on this aspect:

- Government intervention should focus on facilitating self-managed process of housing plots acquisition being undertaken by low-income households.
- Urban land managers should identify all unconstrained developable spaces within the city boundary and provide planned plots building based on perceived population trends.
- There is need for extensive support in investment capacity for the poor urban dwellers.
- The government needs to deal with the problem of weak land administration systems in urban areas to ensure that regulations and legal provisions are implemented.
- The authorities should speed up process of compensation payments and resettlements by empowering local authorities to effect compensation. The local authorities should also speedily implement projects and enforce changes in land use after compensation has been made.
- The government should undertake a comprehensive Land Registration to secure the property rights of most Malawians since land claims are held without documentary evidence under customary tenure
- The country should come up with a clear condominium law to guide management of common property considering increasing developments of apartments in the cities.

The study has also shown that there are a series of regulations and restrictions on urban land that are for the most part justified on the basis of overall public interest but are not fully enforced. These restrictions include land transactions, land ownership, owner type, use, size of holding and price. There are also some restrictions as well on rural land use relating to land transaction, land ownership and ownership types, some of which are unwritten. Restrictions especially those that do not take into consideration livelihoods needs of the rural community are generally challenged and difficult to enforce. The weak enforcement of restrictions and regulations require full implementation of decentralization policy to empower local authorities. There is also need for civic education for urban dwellers on land related procedures and restrictions.

The study results have shown that there are a number of public institutions and statutory agencies dealing with land matters. This creates confusion and overlaps over jurisdiction. The number of land institutions and agencies need to be streamlined. The ministry of Lands, Housing and Urban Development should establish clear coordination mechanisms with other government ministries and agencies to avoid overlaps in land administration. The Ministry also needs to develop and strengthen its capacity to enable it to provide land services (land administration and management) to the public in an efficient and effective manner in order to promote and encourage sustainable management and utilization of land and land based resources.

Land policy implementation needs a robust monitoring and evaluation system to assist in measuring achievement of its objectives and goals. Due to the complexity and sensitivity of the land issues, there is need for the government, with support from development partners and civil society organizations, through appropriate legal framework to institute regular monitoring and evaluation and public reporting on the implementation of land policy and reform agenda. This would ensure that the rights of the different vulnerable groups are monitored and protected.

### **Land use planning, management and taxation**

The study has shown that the responsibility of making and amending land use plans rests in the government and local authorities but there is little or no evidence that public input is sought and utilized on a regular and systematic manner when making and amending land use plans in urban areas. To improve transparency and public participation in land use planning and management, some policy options are suggested which include that public input should be mandatory by law when making and amending land use plans as is the case with Environmental Impact Assessment process for development projects.

The study has also shown that land use planning in the rural areas has been on an ad-hoc basis. There are no rural land use plans in place for most parts of the country. Only physical plans exist for selected secondary growth centres and four districts. To improve the situation, two policy options are proposed:

- A National Land Use and Physical Development Management policy and plan should be developed and implemented as a guide for rural and urban land use.
- District and Town Councils are required to prepare Planning Schemes for all areas (agricultural land, trading centers and settlements) within their jurisdiction in consultation with traditional leaders and communities.

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, the study has shown that 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 criteria set for declaring an area a ratable should be clear and not restrictive. The local authorities should consider coming up with special rating areas to consider informal areas in urban areas which may be subjected to flat rates as may be determined. The government and local authorities should develop mechanisms for making sure that gains and benefits are distributed to the public.

Although urban development is guided by the Urban Structure Plans (USP), there seems to be lack of capacity and commitment to keep plans up to date. There should be a regular programme for updating physical development plans and adequate resources be provided as appropriate. Capacity improvement is required for both Physical Planning Department and City Council to

enable them effectively perform their mandates and prepare up to date USP. There is need for elaborate urban planning with proper projections for urban growth – with targets and proper monitoring. This will assist to determine effective demand for land in urban areas to avoid speculation.

The study has shown that information on procedures and channels to be followed to obtain a building permit are not widely disseminated to developers or those seeking building permits. The Town and Country Planning Guidelines and Standards and other documents to do with planning cannot be easily obtained. The local authorities need to develop up to date and accessible guidelines on how to obtain a building permit and these guidelines should be widely publicized and accessible.

The assessment of land for tax purposes in Malawi is based on market prices, but there is divergence between recorded values and market prices across different uses and types of users because valuation rolls are not updated regularly. A lot of people have no access to the valuation role because it is centrally kept by the local authorities. In order to improve on current state of events several recommendations are proposed. Valuations need to be done every five years coupled with annual supplementary valuations. There is need for a separate law on valuation that will act as a guideline during valuations rather embedding it in the local government act.

### **Public Land Management**

The study has noted that public land ownership is generally justified by the provision of public goods at the appropriate level of government but management may be discretionary because the land is managed by different government agencies including Ministry of Lands, other ministries, city councils and district council. In addition, there is no comprehensive information on how much public land there is and how it is managed by the different entities. The study thus recommends that:

- All public land including government land should be properly surveyed and boundaries demarcated.
- The government should decentralize how land information is managed to enhance accessibility of public land information.

The study further notes that there are no clear responsibilities on management of public land between those using it e.g. school and hospital authorities and the land authorities such as Ministry of Lands or District Councils. The government should therefore clearly spell out responsibilities for management of public land.

The study has also highlighted that there is limited human capacity and financial resources to ensure responsible management of public lands. There are either significantly inadequate

resources or marked inefficient organizational capacity leading to little or no management of public lands. This results in very few activities being done and failure to control abuse of public land. It is therefore, recommended that:

- The ministries and civil society organizations working on land should do more lobbying for elevating the profile of the land sector in national development priorities.
- Civil society working on land issues need to work in collaboration with government to increase impact and effectiveness of programmes.
- There is need for intensive capacity building in the land sector to ensure effective land management.

The study has noted that where land is expropriated, it is done for public interest and for urban development as per plans and compensation, in kind or in cash, is paid so that the displaced households have comparable assets. In a number of cases, government fails or delays to pay compensation and relies on developers to pay compensation. It is therefore recommended that:

- Government should improve on timeliness of effecting compensation and minimize on relying on developers for compensation.
- More funding is needed in government budget for compensation coupled with decentralization of payment of compensation functions to district councils.

The study has noted that independent avenues to lodge a complaint against expropriation exist in Malawi at different levels through the court system or the office of the Ombudsman. However, there are some access restrictions because of the cost incurred to access these services such as transport and legal fees as such may only be accessible by mid-income and wealthy. Local land tribunals would help to deal with appeal structure at local level as is proposed in the draft new land bill.

The process for allocating land for all categories is not done by open tender or auction but by other ways such as internal allocation committees. In the absence of public auction or open tender processes, the public land is not leased at the market price. To make the disposal of public land more transparent and equitable, the government should make public the information leading to the allocation of residential plots to individuals.

### **Public Provision of Land Information**

The study has shown that ‘Between 70% and 90% of records for privately held land registered in the registry are readily identifiable in the registry maps or cadastre. The main challenge noted is that the land registry is not properly organized so that some parcels and associated encumbrances may not be recorded.

The study also highlights that most relevant public restrictions or charges on land are recorded consistently and can be verified at a low cost by any interested party. There are very few public

restrictions that can be considered and these may include public roads and road reserves, reserved areas, historical sites and other protected areas. However, there are many valuable uses of land that are not protected. These include river line areas, forest areas, watershed areas and mountains.

The Ministry of Lands, Housing and Urban Development with support from the World Bank and other donors (under BESTAP Project) and with technical support from Land Equity International is undertaking an initiative to modernize and computerize title and deeds registration systems and preserve the current manual land records through digitization. For the system to be operating on a better level there has to be massive modernization of the registries with equipment upgrade and increased budgets.

The cost for registering property transfer is less than 1% of the property value. There is, however, a need for civic education to make the general public aware of most of the costs associated with land or real property transactions. The Ministry of Lands must play a major role of civic education.

According to the study results, the registry is not financially viable and cannot sustain itself through the fees it collects. The government needs to work out a revenue generation system for the Registry and monitor its operational costs for a period of say one year so as to compute workable fees which can initially sustain its operations. In the long run interventions which could lower operational costs should be adopted.

Government periodically publishes schedules through government gazette but these may not be accessible by the majority and the information is not also publicized through other media forums. People also do not appreciate the rationale for existing land transaction fees because there is no transparency and public involvement during their formulation.

The study also shows that mechanisms to detect and deal with illegal staff behavior are largely nonexistent. Members noted that senior staff in the Ministry of Lands are supposed to supervise and monitor the operations of the registry but there are no established mechanisms to detect and deal with illegal staff behavior. The Anti Corruption Bureau also investigates and takes action on all reported cases of illegal staff behavior relating to land. Investment in human capital can improve the operations of the registry.

### **Dispute Resolution and Conflict Management**

The study has shown that institutions for providing a first instance of conflict resolution are accessible at the local level but where these are not available informal institutions perform this function in a way that is locally recognized. There is clear system for dispute resolution from

community level starting from village chief to Traditional Authority, though informal, then to district councils and thereafter to the courts (magistrate or high court).

The study also shows that there are parallel avenues for conflict resolution on land related matters. One can pursue traditional chiefs and the formal courts system 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. 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. In some cases the decisions of traditional leaders on land conflicts have been challenged in formal courts as lacking legal basis. This therefore calls for reconciliation of customary law and written laws so that they can interrelate and be harmonized.

A process exists to appeal rulings on land cases through higher level courts e.g. through the High Court and Supreme Court but legal costs are considered prohibitive and the process takes a long time. The experts noted that land proceedings and disputes are on the rise (about 10-30%) and it is desirable that proper mechanisms suitable to the whole country are established and maintained. The study noted agreed that a decision in a land-related conflict is reached in the first instance court within 1 year for less than 50% of cases and long standing land cases comprise around 20% of the all land cases. To deal with increasing land related disputes, the following policy recommendations are advanced:

- A study should be done to review and consolidate the procedures and enforcement methods currently available in all land disputes and if approved definite recommendations for the establishment of National Land Tribunal system.
- There is also need to improve on information management at the land registry to improve access to information and reduce alleged fraud at the registry.

## 1.1 General description of process

The implementation of the LGAF in Malawi started in April 2011 and was coordinated by a Country Coordinator (Paul Jere) (the) in collaboration with Ministry of Lands, Housing and Urban Development and the World Bank. The Country Coordinator was responsible for facilitating the LGAF process in Malawi including identifying and supervising a team of land sector specialists, organizing and facilitating expert panel session and writing the national report. The first task the Country Coordinator undertook was to review the LGAF in the context of the Malawi situation. The Definitions and indicators for the LGAF were reviewed by the Country Coordinator to ensure that they reflected the local situation. In June 2011, an introductory workshop was organized by the Ministry and held at the World Bank Malawi office conference center to introduce the LGAF (its scope and methodology) to national stakeholders which included various government ministries, NGOs and development partners. The workshop was also aimed to validate the four experts selected to undertake expert investigations on the thematic areas. In addition the workshop provided an opportunity for stakeholders to suggest appropriate names of experts to be involved in the expert panel sessions. Although this was not provided for in the implementation manual, it was decided that this was a necessary step as the LGAF was a new process for Malawi and needed to be widely publicized and involve all key stakeholders.

After the introductory workshop, the process of implementing the LGAF relied on 2 main activities as guided by the implementation manual. These are:

(i) Expert analysis undertaken by Expert Investigators

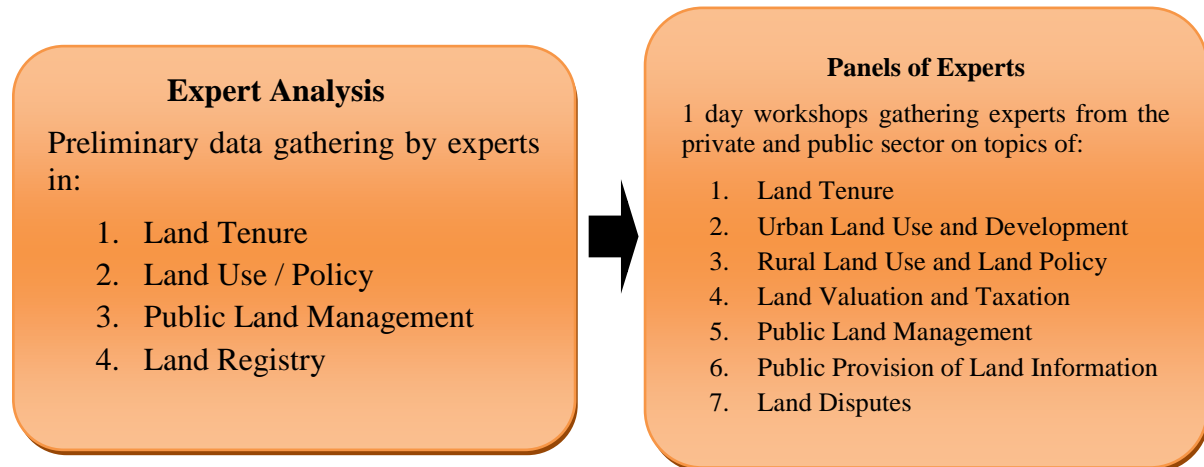
The study commenced with individual expert analyses of more than half the LGAF dimensions. Up to five Expert Investigators gathered the necessary data and information through a review of the existing legal framework and available statistics, procedural reports and other forms of accessible data. A key output from the expert investigations was a typology of land tenures that apply in Malawi and a preliminary assessment of some of the LGAF dimensions. The gathered information was then used as briefing material for the Panels of Expert.

(ii) Panel assessments undertaken by Panels of Experts

The second step in the implementation of the LGAF was the gathering of Panels of Experts in various areas of the land sector. Invited experts met for a day as a panel to assess and discuss a specific set of land governance indicators and dimensions and to provide a collective and motivated ranking for each one of them. Each panel also discussed policy interventions and recommendations for each area under discussion. The LGAF process in Malawi managed to bring together seven such panels.

Figure 1 below depicts the process followed in Malawi.

**Figure 1: Schematic Description of Process for Implementation of LGAF**



## 1.2 Expert Analysis work

The general objectives of an Expert Investigations were to:

1. Gather evidence to make an expert assessment on a prescribed set of indicators from the LGAF that describe the level of governance in the land sector.
2. Deduce policy recommendations that would be in line with best practice given the contextual setting of the country.

In practice, the Expert Investigation gathered relevant data and information (from administrative datasets, as well as legislative, policy, institutional and project report documents) focusing on the 5 key thematic areas of the LGAF. The collected information as well as preliminary rankings for the set of dimensions was presented to Expert Panels as supporting evidence to help the Panels decide on an appropriate score for these dimensions.

Four Expert Investigators were initially recruited based on recommendations from the Ministry of Lands, Housing and Urban Development. The experts included the following:

Mr. Francis Liuma – Land tenure

Mr. Feston Zambezi – Land use

Mr. John Mlava – Public Land management

Mr. Patrick Yasini – Land registry



In addition, Mr. George Kaliwo, a legal expert was recruited to work with the land tenure expert to ensure all legal aspects and issues to do with dispute resolution are addressed. An arrangement was also made for the experts on land use and public land management to work together on the two areas considering the combined qualifications and experiences the two had. This would address any deficiencies in any of the two as they both had some experiences in land use and public land management.

One key challenge experienced in the expert investigation process was the delay in submission of report by most of the experts citing inadequate and incomplete information gathered due to poor information management in a number of information sources such as government offices. Only one expert on land use was able to deliver a draft report within reasonable time but the rest of the experts had significant delays to submit their drafts prompting a number of reminders. The other challenge noted was that it was difficult to find available experts as per all the qualifications provided in the manual and this resulted in recruiting an extra hand for the land tenure expert to deal with legal issues and arranging for two experts to work together on two areas to ensure synergies and complementarity in experiences. In addition, it was found that all but one expert were from the University as these were the only ones available with relevant expertise. In future LGAF exercises it may be prudent to broaden the number of experts to more than four and allow for more than one expert to handle one area of study.

### **1.3 Expert Panels**

One day panel workshops were held and moderated by the Country Coordinator. A group of individuals (3-5) with technical expertise in the relevant field constituted the “panel of experts”. The actual composition of the panel was proposed by participants at the LGAF introductory stakeholder workshop and decided by the Country Coordinator in consultation with the Ministry of Lands, Housing and Urban Development, the World Bank and the four Expert investigators. This took into consideration their areas of expertise and experiences as well as mixing people from the public sector with private sector and civil society. A consideration was also made to include local traditional leaders (chiefs) to participate in some of the panel session.

The Ministry sent letters of nominations and invitation for the panel members. The Country Coordinator sent the relevant background information and guidelines to all panelists before the day for the workshop. Seven panel sessions were held in a period of two weeks in October and November 2011 at a hired facility (Reserve Bank of Malawi Club House) in Lilongwe.

The first Panel Workshop to be organized was on Land Tenure. This was postponed because only one panelist turned up on the scheduled date due to acute fuel shortages prevalent in the country. On the rescheduled date four panel members attended the session. These included Director of Planning, Lilongwe City Council; Assistant Commissioner for Lands in the Ministry of Lands, Housing and Urban Development and; Land Administration Expert/Valuer in private

practice and the Land tenure Expert from University of Malawi who handled the expert investigation on land tenure.

Second Expert Panel organized was on Urban Land Use Planning and Development. The Panel Members present for this session were: a member from Department of Housing, Ministry of Lands, Housing and Urban Development and two other members from UN HABITAT and Physical Planning department in the Ministry of Lands, Housing and Urban Development.

The third Expert Panel organized was on Rural Land Use and Policy. Five Panel members were present for the workshop. These include Director of Total Land Care, a representative from CARE Malawi, Deputy Director from Department of Land Resources Conservation in Ministry of Agriculture, Retired Director of Land Resources Conservation Department and Economist from Ministry of Lands, Housing and Urban Development.

The fourth expert panel on Land Valuation and Taxation was organized to assess 6 LGAF dimensions. The Panel Members who attended the meeting were: Acting Director of Housing from Ministry of Lands, Housing and Urban Development; Private Valuer, TG Msonda and Associates, an academician from University of Malawi, College of Agriculture and Principal Economist, Ministry of Lands, Housing and Urban Development and Economist in the Ministry of Lands, Housing and Urban Development.

The fifth Expert Panel was on Public Land Management. The Panel had 16 LGAF dimensions to be assessed. The panel members were Regional Commissioner for Lands (Central region), Lands Officer for Lilongwe District Council, Economist in the Policy and Planning Department, Ministry of Lands, Housing and Urban Development and an expert from University of Malawi, Bunda College of Agriculture.

The next expert panel workshop was on Public Provision of Land Information. The panel had 16 LGAF dimensions to assess. Of the five Expert Panel Members invited to this panel only three attended the session. These included a member from Lilongwe City Assembly and Project Manager for BESTAP Project. They were joined by Principal Economist in the Planning Department of Ministry of Lands, Housing and Urban Development. The panelist decided to go ahead with the meeting despite the absence of members from the land registry who promised to join in later. It was agreed that the results should be sent to the other members for their inputs as there was no more time to keep postponing the panel sessions. The inputs of the registry officials have been integrated in this report.

The last expert panel was on Dispute Resolution which assessed seven LGAF dimensions. Three Expert Panel Members (EPMs) among those invited attended the panel session. The panel comprised of a private legal practitioner who is also a Commissioner for Malawi Human Rights

Commission, District Commissioner for Ntcheu District (representing district administration authorities) and a Traditional Authority from Ntcheu District (representing traditional leaders). Also present was an Economist in the Planning Department of Ministry of Lands, Housing and Urban Development.

The biggest challenge in the panel sessions was low attendance despite confirmations. This was caused mainly by transport problems due to fuel scarcity experienced in the country during the period and for most part of 2011. This led to postponement and rescheduling of some sessions. Except for the panel on rural land use, most other panels had lower attendance than expected such that in some sessions it was decided to just go ahead with available experts considering the delays incurred by postponement. This led to some dimensions not adequately assessed due to absence of appropriate experts for those areas. For example, under the valuation and taxation panel, all the dimensions on taxation were not adequately assessed because of absence of official from the tax authority. The tax authority experts had to be interviewed separately. The panel on registry also had challenges because the officials from the land registry did not show up. Specific arrangements had to be made after the sessions to visit the relevant offices to engage the officials and collect the needed information.

Malawi has a total territorial area of approximately 118,000 km<sup>2</sup> (11,832,167 ha) of which 20% is covered by water. Forest, wildlife reserves, settlements and infrastructure cover about 19% leaving 61% land area with varied potential and limitations to different land use types basing on topography, soils, agro-climate and other social and cultural factors. Table 1 below shows that out of 9.4 million hectares, 1.7 million hectares constitute protected areas leaving 7.7 million hectares available for agriculture and other land uses.

**Table 1: Land Use and availability in Malawi**

Land Use and availability in Malawi	Million ha.	% of total
Total Land Area of Malawi (Excluding water)	9.4	100
Protected Area (National Parks, Forest and Game Reserves)	1.7	18
Land Available for Agriculture	7.7	82
Land Available for Smallholder Agriculture and Estates	7.7	82
Estimated Land Under Estates	1.2	13
Land Available for Smallholders	6.5	69

Source: Malawi National Land Policy (2002)

Other classifications of land in Malawi according to tenure regimes show the following breakdown:

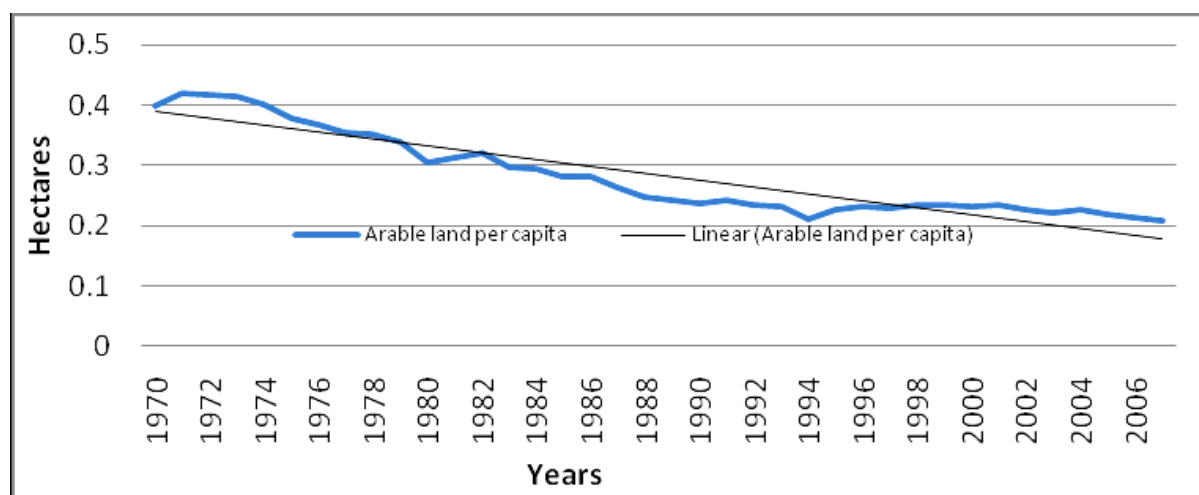
**Table 2: Land in Malawi**

Type of land	Hectares
Suitable Customary Land	4,100,000
Unsuitable Customary Land	2,100,000
Public Land	1,800,000
Estate Land	1,100,000
Urban	300,000
<b>Total</b>	<b>9,400,000</b>

Land is a key asset for economic growth and development of Malawi. The Malawi economy continues to rely heavily on agriculture and natural resources for a significant share of GDP (>40%), national food needs, employment, and export revenue. At the same time agriculture, natural resource use and other land-based activities are major sources of livelihoods for the majority of the population. Average land holding size per household in Malawi is estimated at

1.2 hectares while the average land per capita is 0.33 hectares (GOM, 2010c). Per capita arable land holdings have been declining from about 0.4 hectares in 1970 to about 0.2 hectares in 2007, partly due to high population growth rate that has led to intergenerational fragmentation of land holdings. In addition, per capita land holdings are highly skewed, with the poor holding only 0.23 hectares per capita compared to the non-poor that hold 0.42 hectares per capita. The small land holding sizes are reflected in Figure 2 which shows the declining trends in per capita cultivatable land in Malawi.

**Figure 2: Trends in per capita arable land, 1970 – 2007**



Source: Malawi Environmental Outlook report 2011

The 2008 Population Census showed that the population of the country was 13, 077, 160 people, having increased at an average annual rate of 2.8 percent from 9,934,000 in 1998 (National Statistical Office, 2008a). Population density was therefore estimated at 139 people per square kilometer, having increased from 105 people per square kilometre in 1998. This makes Malawi one of the most densely populated countries in continental Africa, surpassed only by Burundi, Gambia, Nigeria, Rwanda and Uganda. The pressure on the limited land resources is particularly severe on Likoma Island with a population density of 580 people per square kilometre and in Thyolo District with a density of 343 people per square kilometre, and it is lowest in Rumphi District with a population density of 35 people per square kilometre. The effective distribution of population is likely to be higher in some areas because people tend to live and concentrate in valleys and on plains and avoid mountainous and hilly areas, which are included in measuring the total land area.

Before Malawi's colonization, land was broadly vested in the native kingdoms. However, change in land tenure systems started with British colonization and later coming in of colonial settlers in Malawi. The British settlers led to establishment of a legal systems pertaining to land which would safeguard their operations and interests, which led to the adoption of the English law on land management. Malawi had been under British rule for 73 years (1891-1964). The essence of

colonial land policy in Malawi was to appropriate all land to the British sovereign and to facilitate access by the settler community on the basis of private title. The foreigners understood that communities and their chiefs had ownership and control over their land and some historical records indicate that coercion was also used in bringing about consensus in respect of these concessions. The effects of these concessions and colonial policies were that indigenous communities lost ownership and control of land, as all land or the whole of Malawi was now vested in the British sovereign.

In 1951 a Land Ordinance was passed to formalise the land tenure regimes under the British sovereign “created by treaty, convention, agreement or conquest”. The Land Ordinance of 1951 defined land as public, private or customary. However, "customary" land, was in essence construed as a mere species of "public land" (or crown) land granted to the natives. This meant that under British colonial law, native Africans had no formal title to land as such the issue of concern under colonial law was how to regulate occupation and user rights among the native population. According to the Malawi National Land Policy (2002), ‘this was an arrogant concession to Malawi citizens who, by virtue of the Ordinance, became tenants on their own land’. This was the position indigenous communities found themselves in at independence in 1964. The policy also redefined native rights strictly as "occupation rights" in order to discourage the establishment of land rights equivalent to freehold or the concessions claimed by the settlers.

After independence, the new Land Act (Cap 57:01) came into force in 1965 but was considered not to have changed the status and insecurity of customary land rights caused by the application of the Land Ordinance of 1951. The 1965 Land Act still maintained the land categorizations of the Ordinance. Public land was defined as: “all land which is occupied, used or acquired by the Government and any other land, not being customary land or private land”. It included “any land held by Government consequent upon a reversion thereof to the Government on the termination, surrender or falling-in of any freehold or leasehold estate therein pursuant to any covenant or by operation of law; and notwithstanding the revocation of the existing Orders, any land which was, immediately before the coming into operation of the Act, public land within the meaning of the existing Orders”. Private land was defined as: “All land which is owned held or occupied under a freehold title, or a leasehold title, or a Certificate of claim or which is registered as private land under the Registered Land Act”. Customary land was defined as: “all land held, occupied or used under customary law, but does not include any public land”.

The passage of three Acts i.e. Registered Land Act (Cap 58:01), the Customary Land (Development) Act (Cap 59:01) and Local Land Boards Act (Cap 59:02) in 1967 is considered as the ‘first serious attempt to provide a comprehensive body of land law in Malawi’. The Registered Land Act provided the legislative foundation for the transfer from a deed registration system of land administration to a title registration system. The Customary Land

(Development) Act provided for the conversion of customary land for agricultural development and establishes the means for adjudicating disputes over customary land. However, both Acts had limited application. For example the Customary Land (Development) Act was applied to one area in Lilongwe district - Lilongwe West through a World Bank project. The World Bank starting in 1968 supported the Lilongwe Land Development Programme (LLDP) as part of a larger integrated rural development programme (the Lilongwe Rural Development Programme). The overall aim of the programme was increased agricultural productivity. Customary land reform and development was considered as a strategy to reach that goal. The customary land reform was aimed at re-organizing land tenure systems from usufruct to consolidated holdings under a registered deed of freehold title. This was aimed at promoting better land management, preservation and improvement for individual owners. The 1967 Acts thus made provisions for demarcating and registering “family land” rights to individual proprietors. The registering “family land”, however, only opened up for one family representative to be registered as the “proprietor” of the land. Although one name is entered on the register the names of all family members are held ‘on file’ and have to be given notice of any dealings with the land. The Customary Land (Development) Act in Part I indicated that the Act should be selectively applied to a particular area if the Minister responsible for land matters deems it expedient “for better agricultural development”. The limited application of these laws made the effort to secure customary rights to be considered as ‘an incomplete experiment’.

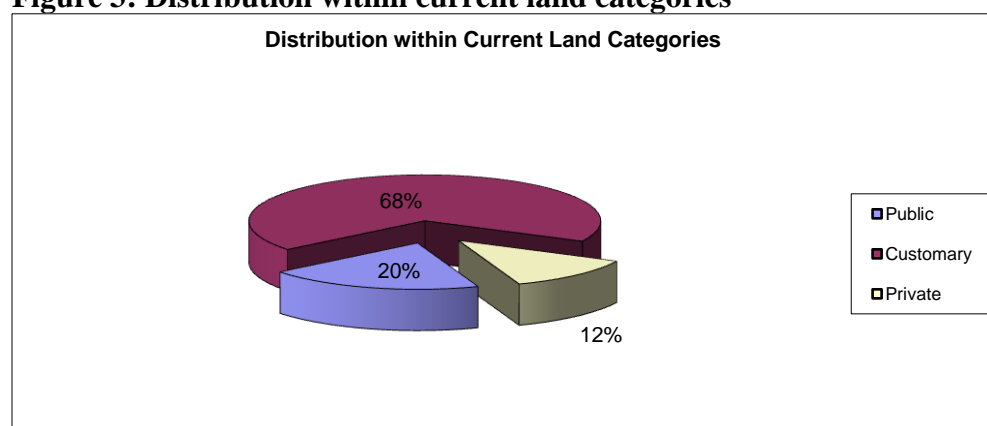
Because of these previous policy failures, there was need to enact a basic land law that would apply to all land, irrespective of tenure. On 18 March 1996, the appointment of a Presidential Commission of inquiry into land policy reform was gazetted. The objective of the commission was to recommend a national land policy that would promote equitable access to land, security of title to land, and improved land administration. Thus, the government had recognized the need for a guided future in land administration, distribution and management (Kandodo 2001). Following several studies on different types of land tenure and an extensive consultative process, the new land policy was developed and came into effect in January 2002. The overall goal of the 2002 National Land Policy is the promotion of tenure security and equitable access to land to facilitate the attainment of social harmony and social economic development (GOM, 2002). Following the coming into force of the new land policy, there was urgent need to review existing land legislation and formulate a new legal framework for land matters which would translate and enforce the principles and provisions of the new land policy. In January 2003, a special Law Commission on the Review of Land-related Laws was established. After thorough review and consultations, a new Land bill and other related draft legislation were developed by the commission and these await parliamentary enactment since 2009. In essence the current prevailing land laws are the 1965 and 1967 old laws.

Public land is land occupied, used or acquired by Government and set aside through appropriate legislation for reasons of national development, security and tourism. Public land includes all

land acquired and occupied by the Government, land in townships not in private ownership, and forest reserves, parks and game reserves and lapsed leaseholds. Private land is defined as all land exclusively held, owned or occupied under a freehold title, a leasehold title or certificate of claim, or is registered under the Registered Land Act (Cap 58:01) of 1967. Registered private land accounts for less than 8% of total land area. Most rural estate land is either freehold or leasehold.

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”. Customary law is defined as “the customary law applicable in the area concerned”. This definition entrusted the authority to administer customary land in the traditional leaders (i.e., chiefs, group village headmen and village headmen) albeit in accordance with the African law and customs prevalent in their areas. Customary land falls under the jurisdiction of traditional authorities and is administered under customary law. Power for the distribution and control of this land is vested in the hands of traditional leaders. The predominant tenure in Malawi is customary tenure. This category comprises the majority of the land and hosts almost 80% of the population living in the rural areas. Estimates from 1998 show that customary land represent 68% of all land (6.1 million ha) (Kishindo, 2006).

**Figure 3: Distribution within current land categories**



The land sector in Malawi faces a number of challenges including inequitable distribution, limited access to land and benefits arising from it, 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. Table 3 below shows a summary of the tenure typology for Malawi.



**Table 3: Tenure Typology for Malawi**

Tenure type <sup>i</sup>	Area & population	Legal recognition & characteristics	Overlaps & potential issues
Public land <sup>1</sup> Government land <sup>2</sup>	Total public land – 2 million ha (1998 – 21% of total land area) ✓ Suitable: 185,000 ha ✓ Unsuitable: 1,665,000 ha ✓ Mostly suitable: 150,000 ha.	<b>Legal recognition:</b> <i>Land Act (1965)</i> <b>Registration/recording:</b> <i>public land is registered and documented by the Government.</i> <b>Transferability:</b> <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.</i>	There is a thin line separating public from government land. In essence, government land is a subset of public land. One of the key issues has been the fact that all land is vested in the state and the president is the custodian/trustee of all land issues in Malawi as per the Republican Constitution and Land Act.
Customary <sup>3</sup>	Total public land – 6.1mil. ha (1998 – 65% of total land area) Cultivated: 1.9 mil. ha Available, suitable: 2.6 mil ha Unsuitable, uncultivated: 1.7 mil. ha  Population: 11,082,861	<b>Legal recognition:</b> Land Act but ownership has no statutory protection <b>Registration/recording:</b> there is no recording and registration system but the Land Policy suggests the need to record and register customary land to ‘provide full legal protection to customary estate’. The <i>ndunda</i> title registration system for rural land took place in Lilongwe as a pilot (1968-81) but was not up-scaled. <b>Transferability:</b> Individuals have access rights to land if they belong to a community and they are entitled to transmit land to designated heirs in perpetuity based on customary systems of inheritance. Transfer through sale or other ways is possible but face	The community also designate some land to be ‘public’ if it has common access characteristics such as graveyards, grazing lands, wetlands, community forests etc. <b>Corrupt administrative practices:</b> fraudulent disposal of customary land by traditional chiefs and government officials which often deny critically needed access to people most desperate for land. <b>Privatising access to customary land:</b> Land users not related to the core lineage members in a community referred to as “akudza or obwera” becoming increasingly targets for eviction or compelled to share land legitimately allocated to them with newer immigrants or members of the core lineage.

1 This is land (including government land) occupied, used, acquired or held by the Government in the public interest. Public land includes land gazetted for use as national parks, conservation, and historical areas. This also includes all land vested in the Government as a result of uncertain ownership, abandonment and land that is unusable for one reason or another. Prior to the Land Policy reform it is “all land which is occupied, used or acquired by government and any other land not being customary land or private land.” Public land vests in perpetuity in the President, as trustee for the government.

2 Government land is owned and used by the government for public purposes, including schools, hospitals, government offices/buildings and government land leased to individuals, companies and institutions for which ground rent is paid. Prior to the Land Policy reform it also included the clause “all public land other than public roads.”

3 This tenure system thrives under the customary law, under the system customary land rights are closely connected to ethnic identity and traditional authorities (TAs). This is tenure system designed to preserve the asset base of the community for current and future generations. Customary land is vested in the President in trust for the people of Malawi and is under the jurisdiction of customary traditional authorities. Customary land may be held communally or individualized in the names of a lineage, family, or individual.

Tenure type <sup>1</sup>	Area & population	Legal recognition & characteristics	Overlaps & potential issues
		problems with inheritance systems	
Private <sup>4</sup>	This accounts between 10 – 15 percent of land in Malawi	<b>Legal recognition:</b> Land Act (1965), Registered Land Act (1967) <b>Registration:</b> This land is registered as freehold or leasehold after registering customary land <b>Transferability:</b> transfer of lease and assigning of private land needs notice to the Minister.	
Freehold <sup>5</sup>		<b>Legal recognition:</b> <i>The Land Act (1965), Registered Land Act (1967), regulate the use and management of freehold land.</i> <b>Registration/recording:</b> The land is designated and registered <b>Transferability:</b> <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</i>	<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 economy. Some of the land was customary land that the government converted to freehold land at independence in an effort to encourage agricultural development.</p> <p>The Presidential Commission of Land Reform noted that Government needs to reconsider granting of freeholds for individual use especially for agricultural purposes due to its effects on diminishing land availability and to its propensity to cause civil calamities in land claims. Furthermore consideration be made to ensure that idle/excess land be surrendered to Govt for relocation.</p>
Leasehold <sup>6</sup>	28% of rural population engaged in leasehold system	<b>Legal recognition:</b> <i>Land Act; Registered Land Act (1967)</i> <b>Registration/recording:</b> <i>Records</i>	Legally, leasehold land tenure allows leases to be provided to all land categories. The law empowers the

<sup>4</sup>Private land is defined as all land which is owned, held or occupied under freehold title or a leased title or a certificate of claim or registered under the Registered Land Act of 1967. According to the Land Policy, land registered as private land under the Registered Land Act includes privately owned freehold land and customary land registered by communities or individuals (upon registration, the land loses its character as customary land).

<sup>5</sup>Freehold originally meant that the land was held by services of a free nature and that it was free from all rent and conditions (a traditionally western concept implying the absolute right to control, manage, use and dispose of a piece of property).

<sup>6</sup>Leasehold tenure is a personal contract granting the exclusive right of use of land for a fixed period shorter than the private ownership rights held by the person issuing the lease (in which land belonging to one entity is, by contractual agreement, leased to another entity for a fixed period of time).

Tenure type <sup>i</sup>	Area & population	Legal recognition & characteristics	Overlaps & potential issues
<i>Urban leasehold by assemblies &amp; government agencies</i>	Total urban (1998) – 120,000 ha (1% of total land) 4 major cities – 85,000 ha Other urban – 35,000 ha Population: 1,946,637	<i>available but the most accessible ones are those issued by minister responsible for lands. Annual ground rents are payable to Lands Dept.</i> <b>Transferability:</b> <i>The land is transferable but sale of land requires prior notification by the Minister as well as inheritance.</i>	<p>minister responsible for land affairs to issue leases on behalf of Government. Such powers have in the past and even present caused change of customary land to leasehold or public land.</p> <p>Malawi has a challenge of Land Registry system at both urban and rural systems. In urban areas, not all areas are registered. In some areas traditional leaders claim title to land within the city boundaries which is a confusion of tenure systems in largely public land. In rural areas, despite having district councils/assemblies, there is inadequate capacity for estate management leading to incomplete records of both leasehold and customary system. The assemblies have lost a potential funding through uncollected ground rents.</p> <p>There has been confusion over designation of registration, ownership and boundaries of authority for urban land between Lands Ministry, and mostly city councils within established city boundaries. The system of enforcement of land matters such as rentals and land registration is still not well developed.</p>
<i>Estate/leasehold on agricultural land</i>	Total – 1,180,000 ha (13% of the total land) (1998) Cultivated: 600,000 ha Available, suitable – 360,000 ha Unsuitable – 220,000 ha		<p>This private tenure system benefited from the conversion of customary land to private leasehold system. However, the basic lease on such land is 21 years. At a time when Malawi land laws were in favour of commercial agriculture, not only did the state move land into estates but also individuals registered customary land to private leasehold estates. However, enforcement of such land use has been problematic.</p>

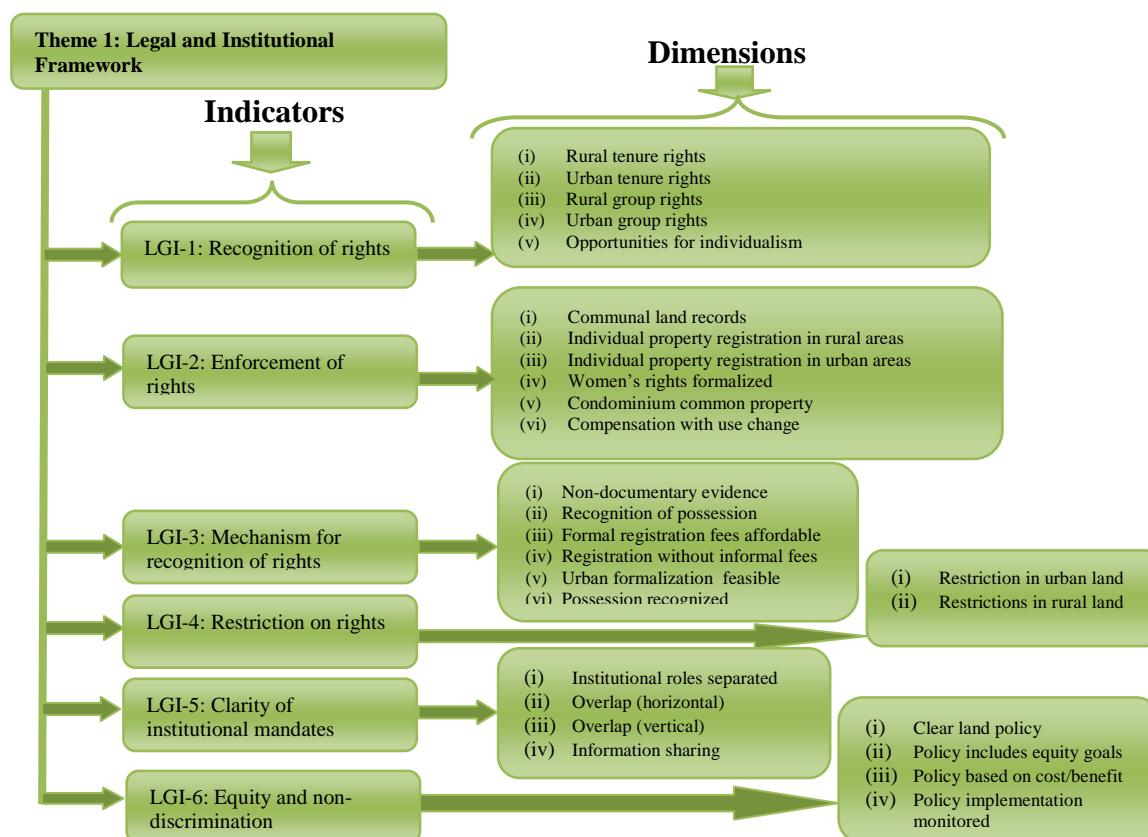
As provided for in the LGAF manual, the land governance assessment is undertaken under five thematic areas. These are:

1. Legal and Institutional Framework
2. Land Use Planning, Management and Taxation
3. Management of Public Land
4. Public Provision of Land Information
5. Dispute Resolution and Conflict Management.

## 3.1 Legal and institutional framework

This thematic area comprises of six Land Governance Indicators (LGIs). The first four indicators (LGI 1 - LGI 4) focus on the recognition, enforcement and restrictions of existing rights. The next two indicators (LGI 5 – LGI 6) focus on the clarity of institutional mandates and participation and equity in land policies (Figure 4 below).

**Figure 4: Structure for Legal and Institutional Framework**



### **3.1.1 Recognition and enforcement of rights (LGI-1, LGI-2, LGI-3)**

#### **3.1.1.1 Rural land tenure rights are legally recognized [LGI-1 (i)]**

According to the Land Act (Cap 57:01) of 1965, there are basically three land tenure types in Malawi: customary, public and private. All the three tenure types prevail in the rural areas.

Public land is occupied, used or acquired by Government for reasons of national development, security and tourism. 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 centers and townships not in private ownership, irrigation schemes, forest reserves, parks and game reserves and lapsed leasehold lands. Private land is land under freehold, leasehold title or certificate of claim, or is registered under the Registered Land Act (Cap 58:01) of 1967. Most rural estate land is either freehold or leasehold.

The predominant tenure in Malawi is customary tenure. It accounts for about 68% and most of this land is in rural areas. Customary land is, "...all land which is held, occupied or used under customary law but does not include any public land". This category comprises the majority of the land and hosts almost 80% of the population living in the rural areas. Under customary tenure, access to land is primarily through inheritance (52%) and marriage (18%). Rights to land through inheritance and marriage are governed by mainly two customary systems. Under the matrilineal system prevalent in the central and southern regions of the country, land is handed down through the female line. If the husband moved to the wife's village at marriage, he generally loses rights to use the household land in the event of divorce or his wife's death. Under the patrilineal system prevalent in the northern region, land is transferred from fathers to sons. If a woman moves to her husband's village at the time of marriage, she often loses rights to use the household land in the event of divorce or the death of her husband.

Land allocations from traditional leaders, land leasing, government resettlement programs, and land purchase are additional routes to access land. An estimated 20% of landholders obtain land from traditional authorities; while roughly 1% of landholders obtain land through purchase. Leases, government land programs, and other means account for the remaining percentage (9%).

While most holders of customary land believe their rights are reasonably secure, tenure insecurity is evident among some social groups. Both women of patrilineal and virilocal (wife moves to husband's village) marriages and men of matrilineal and matrilineal (husband moves to wife's village) marriages express insecurity when considering the potential death of their spouse or the possibility of divorce, because they and their children may be forced to leave the land. The high prevalence of HIV/AIDS among the adult population exacerbates the degree of insecurity that a spouse may experience. Orphans also have insecure property rights; as relatives often take the deceased parents' land, dispossessing the children (Mbaya 2002; Ngwira 2003; Takane 2007a; Holden et al. 2006; Matchaya 2009; Chirwa 2008). Studies show that tenure security is

lowest for women. Because of such sources of insecurity, there is a belief that holding of land under customary rights has long been established as the primary cause of under investment on rural land (Malawi National Land Policy, 2002). Private ownership is viewed as a means to protect assets, use as collateral for loans, and risk sharing for investment, all of which contribute to economic growth.

According to the Land Act, customary land belongs to the Government through the President but entrusted to custodianship of the community leaders i.e. traditional authorities. Under the system, there is a direct link between kinship and land transfer. Notwithstanding the Act, other pieces of legislation recognize the customary land tenure system. However, some of the pieces of legislation despite recognizing the tenure type have not been used or have lost their importance due to lack of capacity to effect the instruments. Some of the specific laws are:

- a) Customary Land (Development) Act – Cap. 59:01 (1967). This law was established to provide for ascertainment of rights and interests in customary land, for better agricultural development of customary land. This gave powers to a minister to declare any customary land a development area and apply demarcation and recording of rights and interests in such land and development of such land
- b) Local Land Boards Act – Cap. 59:02 (1967). This piece of legislation calls for establishment of local land management authorities mostly at district level but in most cases, the Boards have not been designated, thus limiting its usefulness.

The National Land Policy (2002) identified the need to enhance tenure security through creation of customary estates in rural areas. In essence, this is moving towards individual land titling. The policy states that: “In response to growing economic pressure and in recognition of the on-going evolution of customary ownership towards stronger individualized rights, the Government will affirm customary tenure security by granting full legal protection to customary estates. The property rights contained in a customary estate will be private usufructuary rights in perpetuity and once registered; the title of the owner will have full legal status and can be leased or used as security for a mortgage”. The policy further states that customary land granted to any local community or individual for which existing use rights can be confirmed and demarcated by the relevant local community as complying with customary practices will be recognized as granting legal ownership whether registered or not. The Law Commission on review of land related laws found this provision misleading as it considers customary land granted to individuals or a group of persons once registered under the Registered Land Act fall under private land and not customary land.

A study by Silungwe (2009) also faults this approach towards neo-liberalism in land management in Malawi. The paper concludes that: “The land policy adopts a neo-liberal approach to customary land tenure reform, inter alia, to promote a formal land market. The implications of the neo-liberal framework for the ‘poor’ is that it will benefit the ‘non-poor’, it

leads to the integration of customary land into the global economy, it perpetuates landlessness on the part of the ‘poor’ who might not withstand the vagaries of a formal land market. In this vein, the neo-liberal approach to customary land tenure reform under the policy will undermine development”.

In conclusion, under the current legal system, the customary tenure system is legally recognized but not officially recorded and registered at individual parcel level. The various experts under this theme estimate that ‘Existing legal framework recognizes rights held by 70-90% of the rural population, either through customary or statutory tenure regimes.’ This is based on the fact that the current Land Act recognizes customary land which is in majority for rural land. But the challenge is that customary tenure is governed by customary law that varies from area to area and there are no regulatory frameworks and guidelines for land administration.

Customary tenure provides the right to own, use or dispose of land rights not based on documentary evidence guaranteed by government statute but on customary laws recognized as legitimate by the community in that locality. Customary law is thus considered to restrict customary allocations to usufructuary rights in perpetuity considering that overall title is vested in the leaders on behalf of the people. At community level, boundaries of all traditional authority areas are mapped and recorded at district councils and at national level. Community leaders and members keep mental records about land as a property of a particular family or household group. These rights are enforceable through the traditional and sometimes national legal systems. With advancement of technology, cadastral maps can be found with clear boundaries for each of the traditional areas throughout Malawi and can be used to provide estimations of area and population by tenure typology but titles at individual level are not recorded formally.

Malawi has a Wills and Inheritance Act (Cap 10:02) which guides property inheritance but as the Presidential Commission on Land noted despite having the law to guide the process, the Act does not define heirs under customary law. On its part, the Land Policy states that ‘to avoid the inequities often associated with property inheritance, and to confer equal rights to men and women, this policy will promote the registration of individual and family title to customary land as a policy priority’. Much as the policy wants to assist to define land transferability, it is faced with a problem in that whatever it stipulates is not properly supported within the current land law which is outdated.

Despite their extent and legitimacy, customary systems of tenure are under strain, because of demographic pressure, land scarcity and competition, growing urbanisation, inter-group and wider civil conflicts, breakdowns in customary authority, and pluralistic systems of law. As acquisition of land became more difficult, villagers seek land from any source, whether matrilineally or patrilineally. Once they obtained land, men continued to stay in the village after marriage (contrary to the rule of luxurilocal marriage) to secure their land right (Takane 2007),

(Place and Otsuka 1997). Although chiefs have traditionally had the responsibility of land allocation this is now no longer automatically the case. It is becoming increasingly frequent that other actors play this role. For instance, in most communities, there remains very little land that is not already allocated to a family. This means that family heads now play the allocation role as their holdings are fragmented to accommodate new families (Mbaya 2002).

The following recommendations are being put forward to assist in improving rural land rights:

- There is need to pass the new land law so that customary land can be registered and guarantee security as well as to empower local communities to participate in land administration through local land boards and tribunals
- There is need for regulatory framework or guidelines for customary land under customary law.
- There is need for review of customary law especially on inheritance issues to improve security of tenure for marginalized groups such women
- There is need to widely disseminate land related policies and laws to allow people to understand provisions relating to their land rights
- Use of community mapping approach should be promoted a vital part of the development process in Malawi aimed at empowering individual citizens and communities to take active interest in their affairs. This will be able to complement the delineation of traditional authority land as described in the gazetted TA jurisdiction. Currently the areas for traditional authorities are delineated by gazetted descriptions of the extent as extracted from the 50, 000 topographic maps of Malawi. Further there is no central repository of these gazetted areas.
- Decentralisation of land administration should be promoted and put in practice to empower district authorities and local communities to participate in land matters in an orderly fashion.
- Capacity building on land administration should be strengthened through the two public universities (University of Malawi and Mzuzu Univesity) which run land based courses.

### **3.1.1.2 Urban land tenure rights are legally recognized (LGI 1 (ii))**

The Town and Country Planning Act No. 26 of 1988 (Cap 23:01), the Local Government Act of 1998 and the Registered Land Act of 1967 (Cap 58:01) provide legal frameworks for land rights of urban populations. In urban areas, Local Councils and government agencies such as the Ministry of Lands, Malawi Housing Corporation allocate plots in the areas within their jurisdiction. 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 customary tenure is still dominant but these are considered as informal settlements with no legal recognition.

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 title . Resulting of which



is 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.

The informal sector plays a vital role in Malawi's housing sector. In the 80s, the government set up Traditional Housing Areas (THAs) which were seen as a ground-breaking intervention to assist the poor to attain affordable and basic urban housing. The provision of planned Traditional Housing Areas (THAs) could be one of the success stories as it managed to actually keep pace with the growing low income population in urban areas especially in the city of Blantyre. This was an attempt to alleviate problems of squatting and unplanned settlements. The success was that many plots were provided cheaply and quickly. The success could be attributed to the fact that building or public health standards were kept to a minimum (so that plot holders could build with local and cheaper materials). In this way, when beneficiaries' financial position had improved, they would consider improving the dwelling themselves. In this regard, the incremental approach to housing or land provision is one approach that could be considered seriously (Graham, 2009). The primary motivation for such an approach is that it broadens officially recognised property access, and the benefits that flow from property. These benefits are often construed in purely financial terms, whereas there are economic and social functions of property as well. Increasingly, research evidence is illustrating that the capital gains argument, which is premised on access to title and property sales for wealth accumulation benefits, does not automatically hold true across the board. For example, households who are first generation home-owners exhibit a lack of interest in property sales. Once the centrality of asset creation for financial gain is displaced, the role of secure tenure and a broader, speedier base of property access can be considered. Another motivation for an incremental approach is that it better accommodates working with what currently exists in informal settlements, which in turn is an important principle for successful informal settlement intervention.

The needs of the majority poor in urban areas were meant to be served through the THAs, but City Assemblies have been incapable of administering or expanding them. Due to increased urbanization this has resulted in growth of informal settlements. Low-income settlements in Malawi cities are comprised of a mix of owners, landlords and tenants. The attempts by poorer households to find solutions to their housing needs either by squatting or purchasing land in illegal subdivisions resulted in them being perceived as owners.

The high cost of registration (estimated at per capita 4.43 USD) discourages people from registering their properties, and the resulting increase in property values attracting taxes from authorities (Chome and McCall 2005). Most occupants in traditional housing areas that were demarcated by Malawi Housing Corporation have certificates of occupancy. Those wishing to get a formal leasehold title are required to part with K10, 000 (66.7 USD) application fees and

then further fees are to be met to have a cadastral survey undertaken which may cost K40, 000 (267 USD) and further charges involving development charges a minimum of which is 300 USD (1 USD=K150)<sup>7</sup>. Lawyers are bound to levy a 1 percent scaled charge on the value of the transaction for drafting mortgage / lease / transfer documents and 2 percent charge in case they negotiate the transaction. These charges are applicable to all types of security transactions, even where the underlying asset is not land. In addition, banks also levy this 1 percent charge, even though they have in-house counsel and are not supposed to take this fee. Lack of awareness among debtors results in their having to bear such charges. Considering that the documentation is fairly standard for these transactions, such charges are excessive and need to be revisited.

Evidence of existence of traditional informal systems within traditional housing areas is manifested by the continual existence of traditional informal system of land transfers in these settlements (Chome and McCall 2005). For example, there are 19222 plots in the THA's of Blantyre City (Zingwangwa, Chilomoni, Ndirande, Bangwe, Namiyango, South Lunzu) out of these only 595 have leases whilst 18627 are held under occupancy certificates, a mere 3.5%. For those areas such as Chilomoni Fargo where there is a Site and Service Scheme 60 out of 601 have leased their properties whereas in the upgrade areas of Chirimba and Nkolokoti with 172 and 40 plots respectively, there is almost 100% leasing. Reasons mainly being that the structures in those plots with leases were built using it as collateral for loans. The practice by the City Assemblies in formal titling for traditional housing areas has disenchanted occupants from applying formal titles. It may be therefore more sensible to accept Certificates of occupancy a form of conferring title in order to encourage formalization of tenure.

Home ownership is not appropriate for all income groups. This applies particularly to poor and very poor households, who lack adequate incomes to meet long-term financial commitments and need to be able to respond quickly and easily to changing livelihood opportunities. For them, short-term tenure options are preferable, such as rental accommodation. In addition, land titling has not been shown to achieve the social and economic benefits claimed for it; in fact, many of the advantages for which titles are promoted, such as stimulating investment in property improvements, have been realised by less formal increases in tenure status. Moreover, these less formal means may be much cheaper and easier to implement given limited institutional and human resources. This suggests that before launching land titling programmes in urban or peri-urban areas, land administration agencies should explore a wide range of alternative tenure options for achieving social and economic policy objectives.

Individualisation involves substantial administrative costs. Money must be devoted to the process of registration and the determination of individual titles. Trained personnel are required as well as legislative backing and strong administrative machinery.

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<sup>7</sup> This information is sourced from the Traditional Housing Registry of City of Blantyre.

It is, therefore, recommended that government intervention should focus on facilitating self-managed process of providing housing plots acquisition being undertaken by low-income households. It would appear that the focus of ownership is the norm in most unplanned areas rather than renting. In some areas such as in some low-income communities, people have managed to build houses at a very great sacrifice in view of the exorbitant price rises in the building industry. Sites without services scheme should be considered whereby the urban land managers identify all unconstrained developable spaces within the city boundary and provide planned plots that take into account the perceived and allowable population densities for the urban poor. This reduces costs.

Available evidence and expert opinions show that ‘legal framework recognizes rights held by 50-70% of the urban population, either through customary or statutory tenure regimes’. This is in recognition that informal settlements exist in urban areas and there are no clear systems to deal with them. There are also still some customary rights enjoyed in urban areas. The Town and Country Planning Act does not recognize informal areas in zoned urban areas as such any informal area or customary areas in urban areas are illegal. However, informal settlements are growing and increasing in number. It is estimated that almost 67% of the urban population live in informal areas. Some of these informal settlements require formalization but the process is long and cumbersome. Often political influences affect proper enforcement of regulations on formalization and eviction of informal settlements.

The government needs to deal with the problem of weak land administration systems in urban areas to ensure that regulations and legal provisions are implemented and adhered to. This will also lead to an improvement in service delivery to reduce time it takes for leases to be granted. In case of traditional housing areas, the government should support regularization to provide tenure security for the holder.

Piece-meal approaches to land formalization are very costly and affordable only by the wealthy who may take advantage of this at the expense of the poor (Holden et. al., 2006). There is need to seriously consider the issuance of Certificates or licences and permits for occupation to mitigate the issue of tenure insecurity to the urban poor. Awareness campaigns on the processes required for requesting title should be the order.

There is need for extensive support in investment capacity for the poor urban dwellers once tenure status is secured. Failure to recognize the right to housing is detrimental to enhancing security of tenure. This calls for effective support for the local authorities to housing needs of the poor.

Emphasis should be put on the strengthening of local institutions with responsibility for managing land rights and related disputes. Building on local knowledge and existing land

management practices at local level are critical ingredients, and systems of land rights documentation can be gradually refined over time. The costs and techniques of land administration also need to match the value of land.

There is need to recognize secondary and collective rights. This has to be done in a decentralised way by recognizing that even in the urban context traditional leaders are recognised. The continual existence of traditional informal system of land transfers in informal settlements confirms this assertion (Chome and McCall 2005).

### **3.1.1.3 Rural group rights are formally recognized (LGI-1 (iii))**

Kinship is the basic means of acquiring land. Men in matrilineal groups and women in patrilineal societies do not have formal recognition of their group rights to land. Traditionally in matrilineal groups, primary rights to land belong to women, and are inter-generationally transmitted through the female line. The matrilineal system effectively strengthens female security on the land by according them the primary rights to land while simultaneously weakening those of the male counterparts who have only secondary rights enjoyed through the women they marry. There are also communally held lands, held by the clan or village headman (Otsuka, 1997). These include grave yards, grazing lands and other public places designated by the community leaders.

While customary authorities are still effective in regulating land access, the collegiate bodies that used to oversee their work are not. The result is a breakdown in accountability and a privatization of common lands. Similarly, while extended family groups continue to play an important role as land management units in many parts of rural Malawi, demographic change, urbanization, commercialization of land relations and other factors are pushing towards land management decisions being taken more and more at a household or even individual level. In these contexts, land scarcity may lead to a redefinition of the land claims of different groups within the extended family (for instance, along gender lines), with weaker groups becoming more vulnerable to losing their land access. It may also foster tensions between older generations traditionally controlling land access and younger generations left with more limited land access opportunities.

The tenure of most groups in rural areas is not formally recognized but there are ways for them to gain legal representation or organize themselves to gain group recognition. Group rights are recognized if people organize themselves into cooperatives and trusts which are registered as legal entities under the Cooperatives Act and the Trustees Act. The national land policy and the draft new land law has provisions for land management committees at village level. According to the land policy, 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 National Land Policy suggests some tenure-related changes including elevating customary tenure to full common law status so that customary land will be categorized as private land. Once the new land policy is in force, the categories of land recognized in Malawi will be defined as government land, public land or 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 (to be known as customary estates). Leasehold estates may be created out of any category of land. Existing leaseholds on what was previously known as public land will be reclassified as leaseholds on government land. Although the land policy was approved in 2002, it lacks legal backing to implement the proposed measures as such the status quo remains until the new land bill is enacted into law.

#### **3.1.1.4 Urban group rights are recognized in informal areas (LGI-1 (iv))**

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 CCODE. These NGOs are mobilising urban poor communities in informal areas to secure low cost housing by organizing them into groups.

#### **3.1.1.5 When desirable, opportunities for tenure individualization exist and are accessible (LGI-1 (v))**

When desirable, the law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land ownership/use. Procedures are not affordable or clear, leading to widespread discretion or failure to apply even for cases where those affected desire to so.’ Customary Land (Development) Act (Cap. 59:01) 1967 gives powers to the Minister to allow for the demarcation and recording of rights and interests in customary land for ascertainment of rights and for agricultural development.

The law also provides opportunities for individualizing customary land into leasehold estate under Registered Land Act (CAP58:01) but the procedures are not affordable for the poor especially requirements for surveying. The procedures for individualizing land ownership include:

- Adjudication
- Surveying
- Demarcation
- Registration

The Customary Land (Development) Act was only applied in the Lilongwe Agricultural Development area. Following provisions in the national land policy (2002), a new Customary Land Bill has been prepared to replace the old bill. The policy takes recognition of the on-going

evolution of customary tenure towards individualized rights and therefore recommends for more customary tenure security by granting full legal recognition and protection to customary estates. The rights of the holder of the title to customary estate will be usufructuary in perpetuity while leaving the ultimate title to the traditional leaders on behalf of the people.

The policy recommends the need for government to affirm the growing assertion of exclusive rights and the desire to develop customary land with secure tenure by families, corporations, organizations and individuals by recognizing such customary allocations officially as a customary estate. Secondly, it advocates the preservation and modification of fundamental principles of customary tenure for general application to customary estates throughout Malawi. Property rights in customary estate will be usufructuary rights in perpetuity and that once registered, the title will have full legal status and can be leased or used as security for a mortgage loan. The customary estate has to be defined to protect the right of inheritance directly by the children and the surviving spouse of the deceased without discrimination on the basis of gender. With the proposed changes, the administrative role and land management responsibilities of traditional leaders will be defined to compliment formalization of customary estate and safeguarded by the statute.

Until recently, customary systems were perceived as anti-developmental and the preference was for statutory systems. Some critics argued that customary tenure provides insufficient security that contributes to low levels of investment, which is inflexible in responding to market signals, affecting choice of technology and crops. Since land is not marketable, better farmers have difficulty gaining access to land. However, this view is changing. Although there are disadvantages for some people, customary tenures provide low-cost access to land for most of the rural population. Farmers have long-term and secure usufruct rights, and in many places, customary tenures are evolving to accommodate new technologies and formal land markets, at costs lower than state-run land titling and registration systems (Mzumara, 2003). What some studies recommend is enhanced local management of land and resources, giving greater responsibility to rural communities and their representatives (elected councillors or local associations). The State ought not to intervene directly in land tenure issues at local level. Its role should be to define the rules of the game and lay down procedures, while allowing a degree of local autonomy in the way they are implemented.

For customary land, the outer boundaries and major sub-divisions (e.g. traditional authority boundaries) are generally known to officials from paper-based maps. The fact that these boundaries have not, in most cases, changed in the last twenty years or so confers an additional degree of certainty. The major weaknesses are the lack of reliable data at the level of individual land parcels in rural areas (i.e. residential and agricultural plots), lack of clarity (and often parallel process) around the allocation of rights and uncertainty around the status of land rights. The great majority of land rights in the peri-urban and customary rural areas remain unrecorded.

The following recommendations are proposed by the experts:

- The adjudication procedures should be extended to include customary land
- Surveying procedures should be reviewed and simplified to reduce costs, e.g. use of satellite imagery..
- There is need for public intervention in large scale/mass demarcation/surveying to assist poor holders in the process of individualization.

#### **3.1.1.6 Surveying/mapping and registration of rights to communal land [LGI 2 (i)]**

Less than 10% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered. It is noted that 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. It is only estates under leasehold tenure where boundaries are clearly demarcated and registered in the rural areas.

The government should speed up enactment of the new land bill which has been prepared to replace the old bill. In line with the land policy, the new law takes recognition of the on-going evolution of customary tenure towards individualized rights and therefore recommends for more customary tenure security by granting full legal recognition and protection through creation of customary estates. Secondly, there is need for local authorities to undertake demarcation and registration of boundaries for traditional authority areas and villages. In addition, Chiefs Act should be reviewed to include clear definition of villages and ensure that new villages are formed with authority from local authorities.

#### **3.1.1.7 Registration of individually held properties in rural areas [LGI 2 (ii)]**

In Malawi rural land has not been parceled out completely in order to show clearly ownership on an individual basis or otherwise. This is evidenced by incomplete cadastre records in land registries. Fortunately, the Malawi government adopted a National land policy in January 2002, and the policy specifies the need to undertake some measures regarding registration and titling of rural land into customary estates and subsequent transforming into private land. This augments the quest for improved tenure security, productivity and efficiency over the use of land. A Land Law Reform Commission was assembled to formulate the relevant law to effect these provisions. It completed its work and the new land bill now awaits parliament to enact it into a Land Law.

There has been some piloting of the land reforms as provided for in the land policy on the ground. A pilot project called Community Based Rural Land Development financed by the World Bank has been implemented in some districts in the southern region including Thyolo, Mulanje, Machinga and Mangochi to relieve land pressure in the district of Thyolo and Mulanje. The project focused on improving land tenure through resettlement of 15000 poor landless or land constrained farmers, and supporting agricultural productivity of the resettled people in order

to improve food security and socio-economic status. The project was designed to follow a community-driven development approach that included: voluntary acquisition of lands by communities; on-farm development, including the purchase of necessary advisory services and basic inputs; and land administration, including regularization, titling, and registration of property rights in land. Beneficiary households organized themselves into groups of 25–30 households and identified underutilized land for purchase. The project has been implemented for 5 years and has been completed. Although individual families were allocated parcels of land, they do not have title to land as the land is registered under the group which is recognized as a trust under the trustees Act. The individual titling and registration of the household land can only happen upon enactment of the new land law which allows the creation of customary estates.

In assessment of this dimension, it is found that less than 50% of individual properties in rural areas are formally registered. Majority of individual properties in rural areas are under customary tenure and are not formally registered. 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 is 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 Registered Land Act because it was a requirement to get a license or sales quota for special crops such as tobacco. Due to high illiteracy, most rural communities are not aware of the provisions of the law and procedures with respect to registrations. The charges associated with the process of registration into leasehold tenure are many and unaffordable for the rural communities. The revised draft of customary land law will promote individualization of rural land into customary estates. It is urged that the authorities should speed up the process of passing the new land laws to effect reforms included such as formation of local land boards for adjudication, surveying and demarcation of customary land and registration of customary estates.

#### **3.1.1.8 Registration of individually held properties in urban areas [LGI 2 (iii)]**

In any declared planning area, development cannot take place without the permission of the relevant planning authority. Therefore, most of the permanent developments in a planning area are presumed to be permitted and registered. Unpermitted development constitutes illegal development which can be subject to demolition. Information on number of permitted developments from the registers in all planning areas in the country does not reflect in reality the physical situation on the grounds. Some developments were not recorded or captured because there were no records from the approved development application register. Data regarding new approved developments is not properly kept in the registries which deal with development permissions or control.

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. One of the obstacles to formalization is that the process is slow and the costs can be prohibitive for the urban poor. Many people are interested in formal registration of their property because security of tenure promotes investments. However, secondary quantitative data is difficult to obtain in Malawi.

To reduce growing informality in urban areas, there is need for local authorities to ensure that provisions of the Town Planning Act are followed and adhered to. In addition, there is need to properly store all data regarding approved developments, monitor and evaluate developments on a continuous basis. There is need to have both hard copies and computerized records concerning approved developments in the local planning areas. Most developments in Traditional Areas in urban areas have not been approved because it is presumed it is not permanent. Where boundaries have been extended to include such areas, there are more than 70% of individual properties which have not been approved. Planning areas must not be extended to capture customary areas unless the people in such areas are fully compensated and resettled elsewhere maintaining their customs and tradition.

#### **3.1.1.9 Women's rights<sup>8</sup> are recognized in practice by the formal system (in both urban and rural areas)**

The Constitution of Malawi prohibits gender discrimination and under Malawi's formal land laws, women and men have the right to own land, individually or jointly with others. However, cultural systems and biases often prevent women from enjoying equal access, control, and ownership of land (Mbaya 2002; Ngwira 2003).

The Deceased Estates (Wills, Inheritance and Protection) Act of 2004 allows individuals to draft wills that transfer all their interests in their property. If an individual does not have a will or does not dispose of all of his or her property by will, the property will go to providing for the deceased's immediate family. The law also provides that a surviving spouse is entitled to his or her household belongings. Any remaining property shall be passed to the surviving spouse and children, with evidence taken relevant to the shares granted, such as the wishes of the deceased and the need to educate children. If no special circumstances are noted, the law requires equal shares.

For most Malawians, land ownership and inheritance are governed by customary law and traditional practices. Both matrilineal and patrilineal systems exist in Malawi. In most matrilineal systems prevalent in the southern and central regions of Malawi, either the man moves to the woman's village for marriage and lineage is traced through the women, or the woman goes to live in the man's village but the children belong to the woman's lineage (Mbaya 2002; Ngwira 2003; Holden et al. 2006). Under the patrilineal system commonly practiced in the north of the

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<sup>8</sup> Women's rights may be registered individually or jointly, where jointly means that a woman is registered with others in the records. These others may be a husband or other family members or may include members of a wider group.

country, the man's village becomes the marital home, and he pays a bride price to the bride's family. Women do not own property and only the sons, not daughters, inherit property. (Mbaya 2002; Ngwira 2003; Ligomeka 2003).

Approximately 25% of households in Malawi are headed by women, and 63% of rural women-headed households live below the poverty line. In general for both marriage systems, women-headed households possess smaller landholdings than their male counterparts.

Tenure security is lowest for women in patrilineal societies. Women of patrilineal and virilocal (wife moves to husband's village) marriages and men of matrilineal and matrilocal (husband moves to wife's village) marriages express insecurity when considering the potential death of their spouse or the possibility of divorce, because they and their children may be forced to leave the land. Widows are vulnerable to property-grabbing including land by their husbands' relatives (Takane 2007b; White and Malunga 2006; Ngwira 2003).

Women in matrilineal and virilocal marriages similarly are very tenure insecure. Studies indicate that women's land rights are becoming more precarious; also among the groups in southern and central Malawi where matrilineal rules and practices have been the norm for generations (cf. Ferguson & Mulwafu 2005). In fact, how to secure women's land rights is a challenge, not only in areas with a predominantly patrilineal tradition, but also where matrilineal rules and practices traditionally have been dominant. A study by Holden & Lunduka (2006) indicates that the rights of women are becoming increasingly marginalised, not only in the informal family and lineage negotiations over rights and access to land – an increasingly scarce resource – but also in the bargaining processes related to the implementation of land reform policies and programmes.

**Table 4: Statistics on women ownership and access to land for Malawi**

Indicator	Range	Malawi position	Source
Women's Access to Land (to acquire and own land)	0-1; 0=no discrimination)	0.5	OECD: Measuring Gender In(Equality)—Ownership Rights, 2006
Women's Access to Property other than Land	0-1; 0=no discrimination)	0.5	OECD: Measuring Gender In(Equality)—Ownership Rights, 2006
Women's Access to Bank Loans	0-1; 0=no discrimination)	0.5	OECD: Measuring Gender In(Equality)—Ownership Rights, 2006

Source: USAID Country Profile Property Rights and Resource Governance- Malawi

According to discussions with central land registry officials, and based on their records, 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. Traditionally, most property is in the hands of men more especially in the rural areas though gradually women in the urban areas have started coming up to own land because of understanding their rights, but still not more than 15%. For

rural land, most land is under customary tenure and not registered and the only registered land is under estates and these are owned mostly by men. There are however some noted improvements in inheritance laws in the past 5 years, which are allowing more women to inherit land.

There are a number of recommendations that are being proposed to protect women against direct discrimination and more indirect processes of marginalisation of their land rights. The government should translate the provisions of the 2002 National Land Policy into land related legislation and land registration systems that will fully support the Government's goals for economic growth and poverty reduction, while ensuring that the rights of rural women, especially those heading households, are fully recognized. The new law should strengthen the land rights and tenure security of the spouse in cases of death of the partner especially when the spouse has nowhere to go and is too old to remarry. One way is the provision of a secure legal basis for the joint ownership of land by spouses or, at least, the prevention of the disposition of a household's land assets by husbands without the consent of their wives. The second approach would involve the establishment of legal instruments so that women can maintain their rights to land upon the death of their spouses. Women also need to be involved in local land administration and conflict resolution forums. The proposed Customary Land Bill, Part 5 provides more detailed guidelines for the Central, District and TA Land Tribunals. Among others it specifies that the TA Land Tribunal shall consist of six members of the community appointed by an Area Development Committee, two of which shall be women.

#### **3.1.1.9 A condominium regime provides for appropriate management of common property [LGI 2 (v)]**

Common property under condominiums has some recognition but there are no provisions in the law to establish arrangements for the management and maintenance of this common property. The fact that some flats/apartments have been permitted to be constructed by local authorities in all cities in Malawi means that common property under condominiums has some recognition. However, the country does not have a specific condominium law.

Condominium law is very necessary in Malawi and Special Law Commission which was reviewing the land related laws recommended that the country should come up with a clear condominium law to guide management of common property considering increasing developments of apartments in the cities. The issue was not handled at that time and will have to be dealt with separately in subsequent legislative reviews.

#### **3.1.1.10 Compensation due to land use changes [LGI 2 (vi)]**

The land Act (Cap. 57:01) section 28 provides for compensation to any person who suffers any disturbance, loss or damage as a result of land use changes such as conversion of customary land to public land or private land. The compensation is paid by the Office of President and Cabinet in collaboration with Ministry of Lands, Housing and Urban development and Local authorities

(e.g. district councils) who undertake surveys and valuation of the land and developments there in. The assessment of the expert panel was that where people lose rights as a result of land use change outside the expropriation process, compensation in cash or in kind is paid such that these people do not have comparable assets and cannot continue to maintain prior social and economic status. This is because in most cases compensation is too small to allow comparable assets to be acquired and to maintain prior social and economic status.

Customary land compensation is made on developments on the land and not on the land value itself as such many get little compensation because there are few or no developments on the land. It was also noted that there are always delays in paying compensation which makes people not able to acquire comparable assets due to changes in market prices and some people refuse to move demanding more compensation and government ends up paying compensation twice or people ultimately refuse to move.

**Table 5: Compensation situation in the country**

<b>Process</b>	<b>Level of compensation</b>	<b>Compensated rights</b>	<b>Implementation</b>
Rural-urban conversion	compensation paid in cash or in kind but at significantly lower level than compulsory acquisition	Some secondary rights recognized	Implemented with some discretion
Establish reserved land	little or no compensation paid	Some secondary rights recognized	Implemented with some discretion

It is, therefore, recommended that the authorities should speed up process of compensation payments and resettlements by empowering local authorities to effect compensation instead of waiting for central government. The local authorities should also speedily implement projects and enforce changes in land use after compensation has been made.

### **3.1.1.11 Use of non-documentary forms of evidence for recognition of property claims [LGI 3 (i)]**

The assessment revealed that non-documentary forms of evidence are used to obtain recognition of a claim to property along with other documents (e.g. tax receipts or informal purchase notes) when other forms of evidence are not available. This might include witnesses such as chiefs and other relatives. They have about the same strength as the provided documents. The reason being that not all properties are registered in Malawi and currently there is no national identification system in place as non-documentary evidence is also permitted in certain claims.

A program to methodically compile Land Registers to secure the property rights of most Malawians is needed particularly because most land claims are held without documentary

evidence under customary tenure. It is recommended that the authorities should speed up passing of the new land acquisition and compensation laws to ensure clear assessment of claims for compensation. The new land law provides for land acquisition, compensation of claims.

#### **3.1.1.12 Formal recognition of long-term, unchallenged possession [LGI 3 (ii)]**

Legislation exists to formally recognize long-term, unchallenged possession but applies only to private land. The Land Act provides for prescriptive rights to be given after 12 years of uninterrupted and unchallenged occupation. The provisions of current land law only applies for private land and are not applicable on customary land where individuals have only usufructuary rights as the land belongs to families and is in the custodian of the chiefs. It is recommended for the speedy enactment of the new customary land law which will provide for establishment of customary estates as private land. The enactment of the new customary land law will provide for customary estates as private land as such the law will apply even for customary land.

#### **3.1.1.13 First-time registration on demand is not restricted by inability to pay the formal fees [LGI 3(iii)]**

The costs for first time sporadic registration for a typical urban property do not exceed 2% of the property value. This applies for most typical urban areas which are zoned and determined whether they are residential (low, medium and high density) or commercial. The cost of registration was estimated at about MK90000.

Legal charges for lawyers assisting to process the transaction are based on published schedules which is approximately 10% of the value of property. Other costs include transport, time and other costs to reach the office of the registrar general which is based in Blantyre. This is most often seen as a deterrent to low income urban people. For Traditional Housing Areas, the cost of getting a certificate of occupancy is MK2000. Other costs include annual ground rent.

#### **3.1.1.14 First-time registration does not entail significant informal fees [LGI 3 (iv)]**

There are informal fees that need to be paid to effect first registration, but the level of informal fees is significantly less than the formal fees. Informal fees are those fees not gazetted under the Registered Land Act. For example, in traditional housing areas, there are no fees for deed plan and registration but the only cost relates to obtaining certificate of occupancy and ground rent. Informal costs include transport costs and other unplanned costs.

#### **3.1.1.15 Formalization of urban residential housing is feasible and affordable [LGI-3 (v)]**

In Malawi the bulk of urban houses that are built without appropriate approvals and registration are located in the unplanned areas. These are settlements that emerge spontaneously in areas usually zoned for uses other than housing and are tolerated out of realization of the failure of the housing market to meet the needs of the low income earning households. There are no clear policies, comprehensive and coordinated strategies for formalization of such settlements.

Formalization and upgrading of such settlements is done on an ad hoc basis. Where a decision has been made to formalize properties in such areas, a detailed layout is prepared by the Planning Authority and a survey is undertaken to demarcate plots. All the properties in the area earmarked for formalization will be included except where the properties are in a tree belt, road reserves, electricity ways or environmentally sensitive areas.

An individual in an unplanned settlement cannot initiate the process of formalization and has to wait until such time the area in question is subject to an officially sponsored upgrading programme. However, there is no specificity in how often this formalization is undertaken. Unauthorized development also occurs in the formal housing sector. The Town and Country Planning Act (Cap 23:01) provides for retroactive grant of planning permission. Planning permission is granted retroactively in cases where the permission would have been granted anyway. The Act states that a responsible authority may in any case where it considers that unauthorized development has taken place, by written notices served on the owner and occupier of the land or building in respect of which the unauthorized development has taken place, require that person or those persons to apply for a grant of development permission. In this case, formalization is less complicated especially where the unauthorized house is in area zoned for residential. However, the authorities must be satisfied with the soundness of the structure of the building.

In terms of affordability, costs of titling process are considered by many as prohibitive. In Blantyre, for example, most occupants in traditional housing areas that were demarcated by Malawi Housing Corporation (MHC) only have certificates of occupancy. Those wishing to get a formal leasehold title are required to pay K10, 000 (66.7 USD) application fees and then further fees are to be met to have a cadastral survey undertaken which may cost K30,000 (200 USD) and further charges involving Development charges a minimum of which is 200 USD.<sup>9</sup>

Legal fees under the Legal Practitioners (Scale and Minimum Charges) Rules are also considered excessive for low income households. Lawyers are bound to levy a 1 percent scaled charge on the value of the transaction for drafting mortgage/lease/transfer documents and 2 percent charge in case they negotiate the transaction. Considering that the documentation is fairly standard for these transactions, such charges are excessive and need to be rationalized. Under the BESTAP project new forms have been redesigned to make them more user friendly and in such a way that they can be made available online as PDF documents. The process described above is applicable in all towns and cities in the country.

The requirements for formalizing housing in urban areas are clear, straight-forward, and affordable but are not implemented consistently in a transparent manner. While the procedures

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<sup>9</sup> Traditional Housing Registry, Blantyre City Council

for formalization of housing in the formal sector are clear and straight forward, the situation is somewhat different in the informal sector/unplanned settlements. As indicated earlier, there is no clear policy on upgrading of unplanned settlements. In Lilongwe, there seem to be an implicit policy of regularizing all the unplanned settlements irrespective of whether or not the areas are zoned for residential uses.<sup>10</sup> There is a need for a clear policy and guidelines regarding upgrading of informal sectors and strategies should be put in place to ensure that no new unplanned settlements emerge. Wholesale formalization may prove that illegal settlement on public land is the quickest way of acquiring a plot of land.

Regarding affordability, the draft Malawi Housing Policy of 2010 has noted inappropriateness of current building designs, standards and regulations. The Policy further notes that infrastructure providers use standards that exclude different technologies and incremental models of housing supply that do not match with Malawian's ability to pay. The survey rules are also deemed to be not in tandem with the spirit of providing low cost housing solutions to urban dweller and as such a recommendation is made to revise the rules to make survey services more affordable.

### **3.1.1.16 Efficient and transparent process to formalize possession [LGI 3 (vi)]**

Assessments revealed that there is a clear, practical process for the formal recognition of possession but this process is not implemented effectively, consistently and transparently. Capacity gaps in the government departments such as Ministry of Lands, Housing and Urban Development, Malawi Housing Corporation and local authorities e.g. city councils affect efficiency and effectiveness of implementation. Affordability may be a challenge for many people wanting formal recognition. For example, on informal settlements on urban private land, the rules are there but not fully implemented. There are increasing cases of land disputes and informal settlements which calls for a need for formalization. The table below shows the panelists assessment of the implementation of formalization processes on all informal settlements.

**Table 6: Implementation of formalization processes**

<b>Formalization</b>	<b>Formalization process</b>	<b>Implementation</b>	<b>Growth in informality</b>
Informal urban settlement on private land	Clearly defined rules that cover about half the cases	Some discretion in implementation	Some new informal settlers in the past year
Informal urban occupation on public land	Rules not clearly defined, and/or most cases not covered	Some discretion in implementation	Many new informal settlers in the past year

<sup>10</sup> This is according to the New Urban Development Master Plan for Lilongwe.

<b>Formalization</b>	<b>Formalization process</b>	<b>Implementation</b>	<b>Growth in informality</b>
Informal occupation of forest land or protected areas (national parks, wildlife reserves, etc.)	Clearly defined rules that cover most cases	Significant discretion	Very limited number of new informal settlers in the past year

Formalization is done on project basis and not wholesale. The process starts with adjudication followed by surveying, demarcation and registration. The new land laws when enacted, there will be need for large scale adjudication. To facilitate registration and adjudication of customary estates, Traditional Authority jurisdictions will be used as rapid and efficient benchmarks for demarcating individual and family ownership parcels. This will generate referential documentation for parcel and cadastral plans and legal descriptions as required by law. There will also be need to change status of forest areas so as to allow change in land use.

### **3.1.2 Restrictions on rights (LGI-4)**

#### **3.1.2.1 Urban Land Use, Ownership and Transferability Restrictions [LGI 4 (i)]**

There are a series of regulations that are for the most part justified on the basis of overall public interest but that are not enforced. These restrictions include land transactions, land ownership, owner type, use, size of holding and price. However, in Malawi, restrictions on size of holding and price do not exist. The rest exist but are not enforced.

In Traditional Housing Areas (THA), there are restrictions on plot transfers and government (lease) plots which are undeveloped. There are restrictions on one person to have one plot in THA but people bribe officials to get more than one plot. There are also restrictions on foreigners owning land, type of building in certain zones. This promotes corruption and restriction on the size of land in different zones e.g. THA – this promotes crafty practices where people combine plots to get a bigger size.

Legal framework/instruments for restrictions include the Land Act, The Town and Country Planning Act, Town Planning Guidelines, Statutory Urban Plans (structure plans, detailed layouts). The local authorities are the planning authorities in the major cities and are responsible for the enforcement of planning controls (land use). The Ministry of Lands has the ultimate authority over the transfer of interest in land although local authorities and Malawi Housing Corporation are involved to an extent in land transactions in land belonging to them. In the spirit of decentralization and according to the Land Policy, land transactions are to be decentralized to the district level, with district registries established. The table below shows the status of the various restrictions.



**Table 7: Status of the various restrictions**

<b>Restrictions on land ownership</b>	<b>Non-existent</b>	<b>Exists, but not enforced</b>	<b>Exist &amp; enforced</b>	<b>Brief description of restriction and comments</b>
Land transactions	No	Yes	No	In Traditional Housing Areas (THA), there are restrictions on plot transfers and there are also restrictions on government (lease) plots which are undeveloped
Land ownership	No	Yes	No	Restrictions on one person one plot in THA but people bribe officials to get more than one plot
Owner type	No	Yes	No	Restrictions on foreigners owning land
Use	No	Yes	No	Restrictions on type of building in certain zones – this promotes corruption
Size of holding	No	Yes	No	Restriction on the size of land in different zones e.g. THA – this promotes crafty practices where people combine plots to get a bigger size
Price	Yes	No	No	For real property in private ownership the price is determined on an open market.
Rent	Yes	No	No	Determined by supply and demand for real property in private ownership. Malawi Housing Corporation rents are usually below the market rate.

Generally, it can be said that in most cases, there is weak enforcement of restrictions and regulations. Thus, there is need to fully implement the decentralization policy to empower local authorities to enforce restrictions and regulations. In addition, civic education for urban dwellers on procedures and restrictions is a prerequisite. Lastly, there is also need for authorities to work on eliminating artificial land shortages in urban areas by making more land available and accessible for more people. This would help reduction of corruption.

### **3.1.2.2 Restrictions regarding rural land use, ownership and transferability are justified [LGI 4 (ii)]**

A lot of restrictions on rural land use exist on land transaction, land ownership and ownership types. These restrictions which are mainly top-down have, however, met various reactions when enforced. There are also unwritten restrictions within customary land tenure (e.g. cutting down of trees in graveyards) which need to be taken advantage of. Restrictions especially those that do not take into consideration livelihoods needs of the rural community are generally challenged and difficult to enforce. A case in point, Thyolo district has communities encroaching Thyolo mountain forest area due to scarcity of land. It can thus be summarized that even though these restrictions are in existence, they are neither monitored nor enforced in most cases as represented in the Table 8.

**Table 8: Enforcement and monitoring of restrictions**

<b>Restrictions on land ownership</b>	<b>Non-existent</b>	<b>Exists, but not enforced</b>	<b>Exist and Enforced</b>	<b>Brief description of restriction and comments</b>
Land transactions	No	Yes	No	Title deeds in private estate land contain enforceable restrictions
Land ownership	No	Yes	No	Land encroachment in some leasehold estates in Thyolo Encroachment on customary land Land grabbing from poor households by well to do individuals
Owner type	No	Yes	No	There is need to address needs of women and minority groups
Use	No	Yes	No	For leaseholds, the use is restricted to intended land use. Unwritten regulations exist in rural customary land e.g. rules and regulations that govern graveyards and other sacred places, river banks, communal grazing area, steep slopes.
Size of holding	Yes	No	No	So far there no restrictions on the size of holding for rural land uses although recently government has introduced a regime of land rent that discourages investors from holding on large tracts of land not warranted by the scale of their operation.
Price	Yes	No	No	There is an emerging market for customary land in the rural areas. Land sold based on individual negotiation but largely reflect supply and demand.
Rent	Yes	No	No	Wetlands (dambos) are sold or rented in rural areas although this is supposed to be public land

### **3.1.3 Clarity of institutional mandates (based on LGI-5)**

#### **3.1.3.1 There is an appropriate separation of policy formulation, implementation, and arbitration roles (LGI-5 (i))**

The current situation in Malawi is that, ‘there is some separation in the roles of policy formulation, implementation of policy through land management and administration and the arbitration of any disputes that may arise as a result of implementation of policy but there are overlapping and conflicting responsibilities that lead to frequent problems’. The challenge comes in because the same Ministry of Lands, Housing and Urban Development is responsible for policy formulation and implementation of the policy and associated legislative instruments relating to land administration. The Ministry of Lands comprises of the following technical departments with different responsibilities:

- Policy and planning,
- Land administration,
- Physical Planning,
- Surveying,
- Housing,
- Urban development,

All these departments are governed by the National Land Policy which they work to implement. But some of these technical departments e.g. housing also have separate policy and legal framework to govern their work.

The local authorities are responsible for implementing the land related policies at local level. These include city, municipal, town and district councils. These are also governed by the decentralization policy which may not have been harmonized with land policies and laws in terms of implementation modalities.

There are also other government ministries and agencies which are involved in land administration within the confines of their sector policies and mandates. These include Ministry of Agriculture, Irrigation and Water Development, Ministry of Transport and Public Works, Ministry of Natural Resources, Energy and Environment and Ministry of Tourism, Parks and Wildlife. Sometimes there are cases on overlapping roles and conflicting policy provisions between these Ministries and the Ministry of Lands. Table 9 presents main institutions, their responsibilities and separation of functions

**Table 9: Land institutions and their functions**

Land Related Institutions	Type of land	Responsibility / Mandate	Separation of policies and functions	Overlap with other institution
Ministry of Land, Housing and Urban Development	All categories of land	Land Administration and regulating land use.  Land Act (Cap 57:01) use of land, trespass and encroachment. CUSTOMARY LAND (DEVELOPMENT) ACT (CAP 59.01) - rights and interests in customary land including land allocation; aim to promote better land development), LOCAL LAND BOARDS ACT (CAP 59.02) - establishment and power of Local Land Boards - control of land transactions, LAND SURVEY ACT (CAP 59.03) - land surveys, licensing and control of land matters, PLANNING (SUB DIVISION CONTROL) ACT (CAP 59.04) - subdivision of land outside town planning areas, TOWN AND COUNTRY PLANNING ACT (CAP 23.01 ) - town and country planning; development control, acquisition of land compensation	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 offices contrary to the layout plans and in a number of cases plot boundaries crossing features like ESCOM way leaves and rivers	With local government especially on customary land.
Local Government ❖ City ,Town, Municipal Council ❖ District Council ❖ Traditional Authority	Customary and private land	Land Administration, regulating land use, taxation and provision of plots for housing development.		Overlaps between City/ Town councils 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
Parastatals/Private ❖ Malawi Housing ❖ Airports Development Limited (ADL) ❖ MPICO ❖ Press properties ❖ Other property developers	Absolute freehold and leasehold	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

The Land Act, 1965 which regulates land in general and touches on land use and management, in particular, it does not have any regulatory framework for customary land which is the largest single category of land in Malawi. This is land principally under agricultural cultivation, supporting not less than 85% of the population, which is mostly poor and illiterate. Private land under leasehold is subject to a regulatory framework under the Land Act Regulations. Although this regulatory framework is not wholly effective, it would seem that private land receives adequate attention and care, as the owners have the resources, facilities and incentives to practice good land husbandry (UNEP 2001). There is need to provide for clear mandates for different agencies in the dealing with land matters. The number of institutions and statutory agencies dealing with land need to be streamlined in order to avoid confusion over jurisdiction.

### **3.1.3.2 The responsibilities of the ministries and agencies dealing with land do not overlap (horizontal overlap) (LGI-5 (ii))**

As illustrated in Table above, the mandated responsibilities of the various authorities dealing with land administration issues are defined but institutional overlap with those of other land sector agencies and inconsistency is a problem. The situation arises because some of the laid down policies overlap or do not take into consideration other policies e.g. Land Use and Management Policy, Land Policy, Mining Policy, Forestry Policy and National Parks Policy. For example there are reported conflicts between Forestry and Water departments over management of forests which are also water catchment areas; Wildlife and Forestry over management and regulation of game reserves and national parks, Mining and Forestry, Forestry and Agriculture etc. where responsibilities of such land management institutions overlap. It was also observed that the frequent reshuffling and restructuring of responsibilities of Ministries bring in a lot of confusion and conflicts with respect to land policy, administration and management.

The Ministry Lands, Housing and Urban Development has to develop its capacity to enable it to provide land services (Land administration and management)<sup>11</sup> to the public in an efficient and effective manner in order to promote and encourage sustainable management and utilization of land and land based resources. There is need for coordination with the Ministry of Agriculture, Irrigation and Water Development which is primarily responsible for agriculture land and harnessing water resources. Similarly, the Ministry of Natural Resources Energy and Environment has a duty to manage forest resources, fisheries and enforce environmental regulations.

The private institutions and statutory agencies dealing with land result sometimes in confusion over jurisdiction and inadequate policy intervention. The poor capacity in the responsible ministry to offer adequate and reliable advice compounds the problems.

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<sup>11</sup> Land administration is the process of determining, recording and disseminating information about the tenure, value and use of land. Land management is concerned with the management of land as a resource from an environmental and an economic perspective.

### **3.1.3.3 Administrative (vertical) overlap is avoided (LGI-5 (iii))**

Division of land-related responsibilities between the different levels of administration and government is clear with minor overlaps. 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 district councils and local traditional authorities especially in management of public land and allocation of land for property development. In some cases with some institutional levels e.g. chiefs are not fully trusted to undertake their administrative roles by some communities. For example some communities have expressed dissatisfaction on the role of chiefs in customary land administration at local level as such they would prefer to have local tribunals.

There is also some administrative overlap in many situations where customary land areas exist in areas designated as city and town councils. This is contrary to the legal position which state that no customary land should exist in these areas once designated. Territorial infighting in peri-urban and the peripherals of urban traditional housing estates exist since the local village heads who still wield authority over land issues within the urban sector is looked upon as the custodian of land (Chome and McCall, 2006). This clearly results in conflict once allocation of land is effected and the need for registration arises with the city or town authorities.

In this regard, there is need to clearly sort out the issue of territorial infighting by resolving the role of chiefs in urban areas. Improvement of communication between central and local levels is needed to ensure roles of different levels are understood.

## **3.1.4 Participation and equity in land policies (based on LGI-6)**

### **3.1.4.1 Land policy is developed in a participatory manner [LGI 6 (i)]**

Malawi developed a comprehensive national land policy in 2002. The goal of the National Land Policy in Malawi is 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. In developing the Land Policy, the government through Ministry of Lands and Housing (MLH) pursued a consultative approach to build consensus among key stakeholders and thus establish public confidence in the formulation process to enhance chances of implementation. This was critical for establishing synergies and areas of complementarity with other land sector agency policies to ensure consideration of crosscutting issues.

A series of stakeholder consultative meetings, discussions and symposia were conducted throughout the policy drafting process across the nation and at all levels. These included Small Focus-group Gatherings, regional consultative workshops, national consultative workshops and public stakeholder consultative forums. Most of the preliminary policy proposals were discussed

in the consultations with stakeholders, traditional leaders and civil society groups in selected areas of the country where the land problems being considered were most prevalent. The primary objective was to use the collective wisdom of the people to test acceptability of the policy proposals as they were being formulated.

The overall assessment is that in Malawi a Comprehensive policy exists but is still not enforced by legislation because the draft revised land law is yet to be enacted. The land policy was developed following thorough consultation process with all interest groups. However there is no documented evidence as to how much of the inputs from the consultation process were integrated into the policy provisions. In addition there has not been any feedback processes to inform the public how the policy articulates their aspirations and challenges.

#### **3.1.4.2 Meaningful incorporation and monitoring of equity goals [LGI 6 (ii)]**

The Malawi National Land Policy has as one of its guiding principles to integrate the interest of vulnerable groups such as the rights of women, children and the disabled that are often denied on the basis of customs and traditions. These are the most vulnerable groups as far as land rights are concerned and are often found landless or near landless by the community circumstances and influences.

The Land Policy recognized the plight of surviving spouse and minors and has to this end come up with measures to correct the injustice and has provided guidelines for the inheritance of real property. The policy also recognized that the land administration practice by traditional leaders lacks transparency and favours influential members of the community and is prone to abuse. In this regard, the policy has created an institutional framework for dealing with land matters in a customary setting such as tribunals as Alternative Dispute Resolution (ADR) forum. The registration of customary land holdings as private customary estate gives the customary land a fee simple status and therefore its government acquisitions will have to be accompanied by fair compensation and the Land Policy provides for the owner of a customary estate can challenge government valuation.

This assessment shows that the prevailing Land policy in Malawi incorporates some equity objectives but these are not regularly and meaningfully monitored. Rights of indigenous people are well considered, rights of migrants are not considered and rights of landless and women are considered but could be improved. There is no evidence of processes, mechanisms and systems to regularly monitor implementation of the policy provisions and the equity objectives entrenched in the policy. There is need for a robust monitoring and evaluation system on implementation of the land policy and achievement of its objectives to ensure that equity goals are regularly and systematically monitored. Civil society organizations could also support government to facilitate local level and participatory monitoring systems for land related policies

to ensure that the rights of the different vulnerable groups are monitored and protected as the land reform agenda is implemented as per provisions of the policy.

#### **3.1.4.3 Policy implementation is costed, matched with benefits and adequately resourced [LGI 6 (iii)]**

After the adoption of the national land policy in 2002, the government prepared a land reform implementation programme which was costed and time bound. However this was not implemented fully due to lack of supporting legislation for the provisions of the policy and inadequate funding from government and donors to implement the policy. The only noticeable intervention related to land policy implementation was the World Bank funded Community Based Rural Land Development Project (CBRLDP).

The Community-Based Rural Land Development Project was launched in 2005 and targeted 15,000 landless and land-poor households in six districts. The project was implemented by the Ministry of Lands with a US \$27 million grant from the World Bank. In 2009, the project was extended to 2011 with an additional US \$10 million. The project followed a community-driven development approach on a willing buyer willing seller model. The activities of the project included voluntary acquisition of land by communities; on-farm development; and land administration, including regularization, titling, and registration of property rights in land. Beneficiary households organized themselves into groups of 25–30 households and identified idle or underutilized estate land for purchase. The project provided each household with a grant of US \$1050 to be used for land purchase and the initial investment and start-up costs. Each beneficiary household was allocated an average of 2.2 hectares (compared to their original holdings averaging 0.45 hectares). Project reports show that as a result of larger holdings and improved productivity, food insecurity among project beneficiaries has been reduced, and annual household incomes have improved. The objective of the additional financing of an additional two years (to 2011) was to help the government increase the agricultural productivity and incomes of the beneficiaries, strengthen the capacity of land administration institutions, and provide further support to reform of the legal framework for land administration. The project was to use the additional funding for capacity-building to develop land registries at the district level as well as surveying and registration services and assisting the government with the enactment of a new land law.

Some aspects of implementation of the land policy have also been included in the programme and costings of the Malawi Growth and Development Strategy but this has not been given prominence and adequate resources because land is not one of the key priority sectors for the strategy.

Overall, it can be concluded that ‘The implementation of land policy is not fully costed and there are serious inadequacies in budgetary resource allocations and institutional capacity. The



implementation of the Land Policy has not been prioritized as part of the development agenda. There is need for civil society organizations to carry out advocacy and sensitization on the land policy targeting government, donors, parliament and the community so that the policy implementation can receive adequate attention in MGDS prioritization and funding. The government also needs to put extra effort to ensure that the revised land legislation is passed into law to support implementation of the reforms proposed in the land policy.

#### **3.1.4.4 Regular and public reports indicating progress in policy implementation [LGI 6 (iv)]**

The current situation is that formal land institutions report on land policy implementation only in exceptional circumstances and at times not at all. It was noted that there is hardly any public report or reporting process for land policy implementation to the public. If there are reports, there are for internal use of the government or for exceptional demands by donors, parliament or the president. In Malawi there is no legal requirement that public reports be prepared to indicate progress in the policy implementation. The only report which is supposed to be produced every 5 years by law is the state of environment report which includes a land chapter. There are however, some reports that are produced reporting on policy implementation such as the Malawi Growth and Development Strategy annual review reports and other district level report such as District Socioeconomic Profiles (SEPs) and District State of the Environment Report (DSOERs).

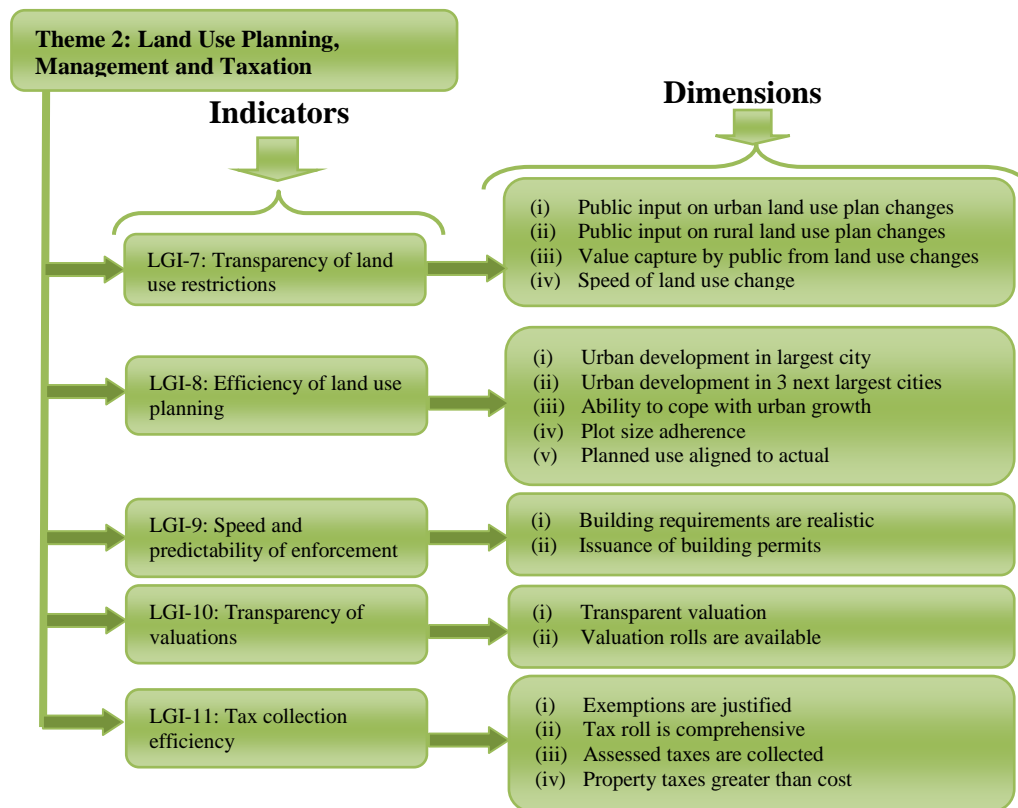
At the start of the preparation of the national land policy, the ministry sought the assistance of a consortium of donors, including the World Bank, DANIDA, DIFD, EU, FAO, and USAID to undertake a series of background studies designed to provide the empirical and analytical basis for any proposed policy reforms. These studies covered all land tenure types and provided the status of land matters at that time as a reflection of past policy implementation. However no further studies have produced after the start of implementation of the new land policy ten years down the line.

It would seem logical to recommend undertaking similar studies to assess status of implementation of the new land policy. Due to the complexity and sensitivity of the land issues, there is need for the government through appropriate legal framework to institute regular public reporting on the implementation of land policy and reform agenda. On some key sectors such as health, education and agriculture, there has been regular civil society monitoring and reporting on budgetary allocation, expenditure and programme implementation with respect to policy provisions. It was however noted that although there is a civil society network on land matter called Landnet, they have not done any monitoring on budget in relation to the land reform process. However they are negotiating with some donors to assist with such a process.

### 3.2 Land use planning, management and taxation

Land use planning, management and taxation thematic area encompass five indicators. These are summarized in the Figure 5 below.

**Figure 5: Framework for land management and taxation**



#### 3.2.1 Land use planning and exemptions from land use restrictions (LGI-7, LGI-8 and LGI-9)

Three indicators are looked at in this sub-section. These include indicators LGI-7, LGI-8 and LGI-9). LGI-7 has four dimensions, while LGI-8 has five dimensions and LGI-9 has two dimensions.

##### 3.2.1.1 Urban Land Use Plans, Changes and Public Input [LGI-7 (i)]

The Town and Country Planning Act of 1988 provide the framework for public participation in the planning process. For example, there is a statutory requirement that the Urban Structure Plans be deposited in designated places for inspection by the general public before finalized. In practice, the situation varies in different cities. Assessment by experts in the panel suggested that in some cases, public input is sought in preparing and amending land use plans in urban areas but the public comments are largely ignored in the finalization of the land use plans. Furthermore, in other cases, public input is not sought in preparing and amending land use plans. For example,

preparation of the master plan for Lilongwe hardly involved the residents of the city and planning professionals.

Overall, there is no evidence that public input is sought and utilized on a regular and systematic manner when making and amending land use plans. This has implications on transparency in land use and management. To improve the current status in Malawi with respect to this dimension, some policy options are suggested. Firstly, public input should be mandatory by law when making and amending land use plans as is the case with Environmental Impact Assessment process for development projects. Evidence of the process of soliciting public input and how that input has been used should be given and also made public. Secondly, there is need to fully implement the decentralization process so as to empower local authorities on these processes so that they can establish appropriate bye-laws to facilitate engagement of the public. There is also need to remove political interference and influences in making land use changes that may result in sub-optimal outcomes of land use options.

#### **3.2.1.2 In rural areas, land use plans and changes in these plans are based on public input [LGI-7 (ii)]**

The 1988 Town and Country Planning Act provides an enabling legal authority for designating planning areas prior to the preparation of any land use planning schemes. However, land use planning in the rural areas has been on an ad-hoc basis. There are no rural land use plans in place for most of the country. Only physical plans exist for selected secondary growth centres. The panel experts noted that in the absence of land use plans being prepared, public input may not be sought. Public input is also not sought in preparing and amending land use plans in secondary growth centers.

Under this dimension, two policy options are proposed. Firstly, a comprehensive National Land Use and Physical Development Management policy has to be developed and implemented as a guide for rural and urban land use and development decisions. Secondly, District and Town Assemblies are required to prepare Planning Schemes for all trading centers and settlements within their jurisdiction in consultation with traditional leaders. The schemes could contain simple land use development proposals and detailed land subdivision plans to guide orderly development of the settlements.

#### **3.2.1.3 Public Benefits from Changes in Permitted Land Use [LGI 7 (iii)]**

The Local Government Act provides for property rates as one of the sources of revenue for Local Councils. The Act further provides for the assessment and application of property rates. Under the Act the Minister is empowered to designate, by notice of gazette, any area that is ratable. However, there are no criteria for creation of ratable area. There are 38 Local Government Areas in Malawi out of which 12 have been declared ratable areas.

The Local Government Act requires that every five years a local council shall cause to be made or enter into a valuation roll for the local government area in order to value all property within that area. However, Quinquennial Valuation Rolls (QVR) are not usually updated as provided for in the Act. Local Councils find the fees charged by the valuers to be somehow exorbitant. It is important to note that the LGA provides for exemptions and remission of rates. However, some of the properties such as private schools and health facilities allowed for remission are commercial in nature.

The annual tax collections depend mainly on three factors: amount of ratable value, rate levy imposed and 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, and general lack of capacity to enforce compliance. In addition, 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 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<sup>12</sup>.

In Malawi, all land parcels in urban areas and areas subject to the Town and Country Planning Act (Cap 23:01) 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, etc. 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.

In view of this, the Local Government Act needs to be amended to provide criteria for designating areas as ratable and all facilities that generate profit should not to be exempted from rate payment. Having few (12) of the 38 Local Government Areas declared ratable areas means that the majority of Local Councils are not able to apply revenue collection strategies that would boost their capacity to offer services and benefits to their residents. It is therefore important that the criteria set for declaring an area a ratable area should not be overly restrictive to the extent of excluding the majority of the Local Councils. The Local Councils should also be made to understand that the public expect an improvement in service delivery once the authorities start

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<sup>12</sup> Source: Local Government Act, Comprehensive Study on the Review of National Decentralization Policy, the Local Government Act and other Relevant Legislation and Policies Impacting on Local Governance Issues (2003)

collecting property taxes. For the areas that are already declared ratable areas, the Local Councils should address the issue of under collection of property tax by ensuring compliance by all property owners irrespective of their standing in society and by maintaining up to date valuation rolls.

The government and local authorities should develop mechanisms for making sure that gains and benefits are distributed to the public. The local councils may consider introducing such measures such as betterment taxes and infrastructure levies.

#### **3.2.1.4 Speed of Land Use Change [LGI 7 (iv)]**

Land use assignment is made during the preparation of land use plans and no major changes in land use assignment are made throughout the duration of the plans. Some changes in land use assignments may be made during the revisions of the plans in alignment with the observed development trends. Actual development in the areas rezoned for a different use can commence as soon as Ministerial approval is granted. Re-zoning can also be carried during the duration of plan but require ministerial approval<sup>13</sup>.

There are some cases where a landlord may apply for change of use. Such applications/requests are duly considered by the Planning Authority and once the permission is granted the applicant may go ahead to develop the area in accordance with the new use assigned to the area.

The panelist felt that the option for this dimension was either A or D. Option A states that ‘more than 70% of the land that has had a change in land use assignment in the past 3 years has changed to its destined use’; while option D states that ‘less than 30% of the land that has had a change in land use assignment in the past 3 years has changed to its destined use.’ This depends on the scale of the land use change. For small scale plot based changes (e.g. change from house to office block), the changes can be made swiftly while for large scale changes e.g. through a revision of the whole city council plans, land use changes take many years (more than 3 years) to take effect. The only exception is when the changes are politically motivated as such changes are effected swiftly. The individual expert ranked the dimension (A) i.e. More than 70 percent of the land that has had a change in land use assignment in the past three years has changed to the destined use.

The current legislation and planning practice adequately ensure that change of land use assignment (rezoning) is done to accommodate development that is compatible with the assigned use. It is however, common that city and town plans tend to be over generous in terms of land allocation. As a result, the land remains vacant or used for other uses for the entire planning period. For example, Area 50 in Lilongwe the capital city which is supposed to be an industrial area is still under traditional settlements. The rate of growth anticipated by the plans did not

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<sup>13</sup> Source: Town and Country Planning Act

materialize due to lack of investors with financial muscle to carry out the proposed development. Again, in Lilongwe, land assigned for industrial development is being used for warehousing because of the slow pace of industrialization the country is facing. It is important that town and city plans are more realistic in the allocation of land. Land that remains idle for a long time provides a fertile ground for squatter development as has been the case in Lilongwe's Area 51 (Mgona) zoned for industrial use. The local authorities should also fight land speculation through taxes and levies to induce faster development of property. Urban physical planning and development controls should also be enforced to discourage speculation. Guidelines for rural land use planning, conservation and environmental management will have to be developed by Local Authorities and Community Development agencies to guide rural land use and development decisions.

### **3.2.1.6 Control of Urban Spatial Expansion in the Largest City [LGI 8 (i)]**

The Town and Country Planning Act provide the basis for the hierarchy of plans. The Act stipulates what plans shall be prepared, contents of the plans, responsibility for preparing the plans, jurisdiction of the plans and relationship between the plans. The National Physical Development Plan (NPDP) deals with spatial aspects of social and economic development of the country. The current NPDP was prepared in the mid 1980's and is outdated. The NPDP is a broad brush policy document and it is difficult to be precise about its implementation. The Plan designated Lilongwe as a national centre and it continues to operate at that level<sup>14</sup>.

Local Physical Development Plans - These comprise an Urban Structure Plan, urban layout plans and urban civic plans. The first two are the most significant for the purpose of guiding development in the cities and towns. The urban structure plan is a land use plan dealing with spatial development issues of an urban centre. Overall it takes very long to update urban structure plan due inadequate allocation of resources by Planning Authorities. The urban structure plan for Lilongwe was prepared in 1986 and was due for revision in 2000. The revised plan has just been prepared and has been submitted to the Minister responsible for planning to approve. Although the delay in revising the Lilongwe Urban Structure Plan has somewhat compromised on its relevance, it continues to be useful in providing a broad policy for the development of the City. The zoning scheme provided adequate land for the spatial expansion of the City. The processing of planning applications overall takes due regard to provisions contained in the urban structure plan.

Layout plans are prepared to guide development and planning decisions. Before any plot allocation can be made, a detailed layout must be prepared and approved by the planning authority. On paper this is an effective tool for planning controls. However so many other factors

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<sup>14</sup> Data source: Town and Country Planning Guidelines and Standards, Office of the President and Cabinet (1987), Physical Planning Department and expert assessment, Lilongwe City Planning Officials.

come into play. For instance the City Planning Department of Lilongwe City Council is faced with serious capacity problems to effectively undertake development control. The Planning Department does not have adequate and appropriate vehicles for undertaking routine inspections. This means the Council is not always able to spot illegal development in good time to take corrective measures. In addition, there are cases where planning approvals are granted without conducting the necessary site inspections. As soon as permission to build is granted the Council has difficulties to carry out scheduled site inspections, and anecdotal evidence suggest that conditions attached to the approvals are frequently violated.

In the largest city in the country, while a hierarchy of regional/detailed land use plans is specified by law, in practice, urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization. The city wide structure plan is in place but there are hardly any local detailed plans to guide development. Even with a city wide plan in place, implementation, compliance and enforcement are a challenge. There is poor implementation and enforcement of plans. Urban growth has not been at pace with development plans – it has outpaced development plans. In addition in most cases, infrastructure is not provided when implementing development plans.

Although urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization, this does not suggest that urban plans are entirely ignored. They still guide decisions made Town Planning Committees. One of the problems could be that the plans are not updated in a timely manner, in which case they are overtaken by development.

Although overall development is guided by the Urban Structure Plans (USP), the current USP for the City is ten years out of date. There seem to be lack of capacity and commitment to keep plans up to date. There should be a programme for updating physical development plans and adequate resources be provided as appropriate. Capacity improvement is required for both Physical Planning Department and Lilongwe City Council to enable them effectively perform their mandates and keep up to date with technologies for handling spatial data.

While plan preparation is somehow straight forward, their implementation is a challenge due to lack of resources to enforce planning controls. Additionally, corrupt practices cannot be discounted as a one area needing attention to reduce incidence of illegal development. It is therefore important that well structured public awareness programmes be developed and implemented to empower the developers and the general public. It is thus important that professional bodies in the country enforce a strict regime of the code of conduct of their members. It is even important to note that over the years a lot of development of urban in character has taken place just outside the City boundary. This development did not benefit from planning controls applicable in a planning area. It is thus important that the Physical Planning

Bill declaring the whole country a planning area should be enacted as a matter of urgency to ensure that peri-urban development takes place in a planned and coordinated manner.

### **3.2.1.7 Planned Urban Development in the Three Largest Cities City [LGI 8 (ii)]**

The NPDP designated Lilongwe and Blantyre as national centres, Mzuzu as Regional Centre, Zomba as a Main Market Centre. Blantyre remains to perform functions of a national centre, while Mzuzu functions as a regional centre. From known inter-settlement functional linkages, Zomba is functioning as a sub-regional centre.

Layout plans are prepared to guide development and planning decisions take into account approved layout plans. Before any plot allocation can be made, a detailed layout must be prepared and approved by the planning authority. On paper this is an effective tool for planning controls. However, so many other factors come into play. Generally, City Planning Department is under resourced and is thus handicapped to effectively undertake development control. Thus the City Councils are not always able to spot illegal development in good time to take corrective measures.

Although the delays in revising urban structure plans inevitably compromised on their relevance, the plans continued to be useful in providing a broad policy for the development of the Cities. The zoning schemes in Zomba and Mzuzu provided adequate land for the spatial expansion of the City. The processing of planning applications overall take due regard to provisions contained in the urban structure plans. Layout plans are prepared to guide urban development in the cities and planning decisions are usually guided by such plans. It is however important to note that, the actual development on the ground may deviate from approved plans and due to inadequate capacity to enforce planning controls and incidence of corrupt practices cannot be ruled out.<sup>15</sup>

In the three largest city in the country, while hierarchy of detailed land use plans is specified by law, in practice, urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization. However, in some other parts of the largest city in the country a hierarchy of regional/detailed land use plans may or may not be specified by law and in practice urban spatial expansion occurs in an ad hoc manner though with little if any infrastructure provided especially in most newly developing areas.

While urban structure plans exist for these cities (Lilongwe, Blantyre, Mzuzu and Zomba), there is poor implementation and enforcement of plans and urban growth occurs in an ad hoc manner not at pace with plans with most infrastructures not provided in newly developed areas. Such needed infrastructure is provided later after urban development has taken place.

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<sup>15</sup> Population and Housing Census (2008), Town and Country Planning Guidelines(1987)



In all the four major cities, new development is not always in accordance with the approved plans. This may largely be attributed to inadequate capacity to enforce planning controls. For instance the inspectorate at the Lilongwe City has no vehicle dedicated to routine site inspections. The general public is aware of this lack of capacity and developers submit plans they know will be approved and on the ground put up a structure that would otherwise not be approved. It is however, not possible to quantify the developments that do not comply with approved plans. The controls that are usually violated include set-backs, access to the plots and plot coverage. On the other hand incidence of corrupt practice cannot be ruled out as contributing towards non-compliance. In terms of the general environment in Malawi, it is not inconceivable that Town Ranger would accept fast cash to turn a blind eye on breach of conditions of a planning permission.

A number of remedial measures are raised to improve the situation. The Local Authorities should ensure that urban structure plans are prepared regularly (every 5 yrs), implemented consistently, enforced and updated. Investment in infrastructure is needed to stimulate urban development. This calls for the local authorities to engage in marketing initiatives for zoned areas to attract more investors for infrastructure and urban development. Lastly, there is need for strategic plans for specific development needs in the city. Nevertheless, the local authorities should also work at improvement of the enforcement of planning controls by making the development control process more transparent. The procedures should be publicized and any documentation regarding planning controls should be made easily accessible to the intended users. This calls for stronger political will to deal with illegal development and corrupt practices at all levels.

### **3.2.1.8 Coping with Urban Growth [LGI 8 (iii)]**

The figures for additional households in an urban area are arrived at by using projected population growth trends and existing household formation habits. In Lilongwe it is estimated there will be 110, 800 additional households by 2020 and 5,540 of serviced land will be required to accommodate the additional households. Formal housing constitutes a very small percent (less than 20%) of the total housing stock, implying that over 80% of the city dwellers live in informal settlements. A similar approach of estimating additional housing units is adopted for secondary cities. Pressure for residential plot in less populated towns is less pronounced compared to the two cities of Lilongwe and Blantyre. However due to inadequate investment in development of housing areas, the problem of lack of serviced units is experienced in cities and towns across the country.<sup>16</sup>

Experts noted that in the largest city in the country, urban planning process/authority is struggling to cope with the increasing demand for serviced units/land as evidenced by the fact that most new dwellings are informal. Although in the largest city urban development is guided by urban structure plans, it should be noted that Urban Structure Plans are usually outdated and

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<sup>16</sup> Data source: Urban Housing Sector Profile, UN Habitat, though outdated.

infrastructure provision does not keep pace with the growth of the city, and this results in proliferation of informal settlement on land designated for non residential uses such as industries. Reasons include rapid urbanization, insufficient investment in infrastructure development and having no policy on informal settlements.

Consequently, there is need to improve the capacity of institutions to deliver services at adequate and affordable level to address the serious gap between formal and informal housing sector. At national level, there is need to promote balanced development by supporting establishment of rural growth centers and secondary towns to make rural areas more attractive and, in turn, curb rural-urban migration. The National Physical Development Plan should be updated to provide an effective framework for human settlements development. In addition, district physical development plans need to be developed in line with national plan to guide urban development at district level. To date only four District Physical Development Plans have been prepared. These include the three proto-type District Physical Development Plans (DPDP) for Machinga, Mzimba and Mchinji prepared under the National Physical Development Plan in the mid 1980's and Karonga DPDP, prepared by the Physical Planning Department. They are all long overdue for updating. The DPDPs do not provide detailed guidelines for the planning and the development of the cities. As such, urban development and planning controls have not been influenced by the absence of up to date District Physical Development Plans.

There is need for elaborate urban planning with proper projections for urban growth – with targets and proper monitoring. This will assist to determine effective demand for land in urban areas to avoid speculation. Secondly, there is need for detailed urban housing profile to assess housing demand and services. Urban sector shelter profile done has recently been done for Malawi and it is hoped that this will provide the needed guidance.

#### **3.2.1.9 Residential Plot Size Adherence in Urban Areas [LGI 8 (iv)]**

For the formal housing sector, the Planning Authorities prepare detailed layout plans and plot sizes are guided by the current planning guidelines and standards (currently under review). There is general agreement that the existing plot sizes are rather generous resulting in exorbitant development charges. At present the issue is the availability of plots in the formal sector rather than size. It should however be pointed out that in the recent past there has been lack of interest in the expansion of traditional housing areas. Table 1 presents plot sizes for residential development in square meters<sup>17</sup>:

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<sup>17</sup> Data source: Housing Policy, Town Planning Standards and Guidelines and Urban Housing Sector Profile. There are no official figures on adherence to plot sizes in the informal sector.

**Table 10: Residential plot sizes**

<b>Low Density</b>	<b>Medium Density</b>	<b>High Density Detached</b>	<b>High Density Semi-detached</b>	<b>Traditional</b>
2000-4000	1000 – 2000	375 – 1000	300-500	375-1000

In the informal sector, the situation is different as there are no specific standards that are followed and accordingly there are variations in plot sizes. Overall, unplanned settlements are characterized by high residential densities as these areas are occupied by low income families that cannot afford to buy large pieces of land for construction of a house. In any case, houses constructed in these areas are modest in size commensurate with the prevailing income levels. In view of the foregoing and field observations, it can be concluded that the majority of plots in the unplanned settlements are within the high density category. However, a new generation of unplanned settlements has emerged, notably in Lilongwe, where up-market residential units are the norm and plot sizes tend to resemble those in designated low and medium density residential areas.

It is a known fact the majority of the people in urban areas in Malawi live in unplanned settlements. The Urban Housing Sector Profile estimated that only 20 percent of the urban population lives in the formal sector. With such a large informal sector, it is conceivable that the existing requirements for residential plot sizes are met in less than 50 percent of the plots.<sup>18</sup>

The panelists noted that the applicability of this dimension is quite tricky for Malawi. In the formal sector (zoned areas), plots are created by the local authorities and standards on plot sizes are followed based on the zone. However, in informal areas, plots are created by local landlords and are of varying sizes with no standards followed. It is only in formal areas where the local authority can enforce compliance on plot sizes because plot sizes are predetermined but in informal areas plots are of varying sizes and boundaries are most often contentious. No studies have been done so far in informal areas to assess plot sizes.

There is general agreement among practitioners that current plot sizes for low density residential areas are somewhat generous and they recommend that the sizes be limited to 2,000 square meters from 4,000 square meters for sustainable development of cities in Malawi. It is also important that authorities work towards meeting the demand for smaller plots (250 – 450)<sup>19</sup> square meters to suit the low income earners and in the process address the problem of the proliferation of unplanned settlements.

<sup>18</sup> 50 percent of plots in formal and informal housing areas

<sup>19</sup> Proposed high density

### 3.2.1.10 Applications for Building Permits [LGI 9 (i)]

The process of obtaining a building permits is fairly long (1-3months or more) as there are many steps to be followed. These steps are technically justified but could be streamlined and the time could be reduced.

**Table 11: Steps in application for building permit**

Step	Agency	Efficiency and transparency of process	Estimate time (days)	Comments
Prepare building plans and submit to the local authority	Developer	Some discretion in implementation	15	This is dependent on the complexity of the project.
Site visit and consultations with service providers such as water boards, electricity body and roads authority	Local authority e.g. city council			
Receiving of applications and calculation of scrutiny fees (Delivered by hand, or via post)	Building Inspector (LA)	Efficient & transparent	1	The Local Councils are the planning authorities. Calculation of the scrutiny fees is based on a formula. Basis for the calculation not usually explained. There is the tendency of under valuing proper in order to reduce the scrutiny fees.
Compliance with by law requirements and Registration	Building Inspector and Planning Registry (LA)	Some discretion in implementation	1	The Local Councils are the planning authorities and the screening process is essential to ensure plans going to the next stage meet the basic requirements.
Compliance with other statutory requirements	Senior Building Inspector (LA)	Efficient & transparent	5	This enables the planning authority to get inputs from other stakeholders on issues such as health, environment and fire protection
Compilation of Technical Committee Agenda	Development Control Manager (LA)	Some discretion in implementation	3	This stage provides an opportunity for undertaking site inspections before the Town Planning Committee Meeting
Technical Committee Meeting	Development Control Manager (LA)	Some discretion in implementation	5	The meeting offers an opportunity for the review of all by laws and planning issues
Compilation of Town Planning Committee Agenda and Meeting of TCPC	Director of Planning and Development	Some discretion in implementation	5	This ensures that only those applications that have satisfied the scrutiny of the Technical Committee.
Notification of decision	Development Control Manager (LA)	Efficient & transparent	7	This offers an opportunity for communicating planning committee decisions to the developers
Collection of approved plans	Planning Registry (LA)	Efficient & transparent	7	Plans to be used at the construction sites and inspection cards are collected during this time
Recording and Filing of Plans	Planning Registry (LA)	Efficient & transparent	1	Ensures that all plans are recorded and properly files.

The cost of fulfilling the requirements needed for the granting of approval for building permits is considered by the panelists as high estimated at about 1% of the development costs and this varies from city to city. However, requirements to obtain a building permit are technically justified but not affordable for the majority of those affected. In addition, requirements to obtain a building permit are over-engineered technically. Scrutiny fee (SF) is the cost for the processing of a building permit and inspection of the construction works. The SF is calculated based the value of the buildings which in turn derived from information the Quantity Surveyors Department of the Ministry of Transport and Public Infrastructure. The following table presents SF ranges as follows:

**Table 12: Scrutiny fee ranges**

Residential			Office/Commercial			Industrial	
Low Density	Medium Density	High Density Permanent	Single Storey	Two Storey	Prestige	Building Blocks	Sheds
1000 -1300	900-1200	700-900	750-950	1100-1400	1800-2000	850-1050	400-500

*Note: The cost per square meter is established within the range given after consideration of the type of building materials for the proposed development.*

The current rates are considered to be low<sup>20</sup> and are thus denying the local authorities much needed revenue to service the town planning committee and effectively enforce planning controls. In addition, plans must be certified by a registered structural engineer and/or architect (at a fee) for all public buildings and for development in designated prime area. This requirement is waived for residential development in medium, high density permanent and high density traditional areas. Thus although the fees charged by architects and engineers are considered by many as exorbitant, the low income earners are not affected by this statutory requirement.<sup>21</sup>

The lack of transparency in the processing of planning permissions is likely to have an adverse effect of promoting corrupt practices. This has the effect of raising the cost of processing an application. Channels/methods used to disseminate information about building permits include Local Authority by-laws, Guidelines and Procedures produced by Local Authorities, Press releases and Bulletin boards.<sup>22</sup>

A situation where requirements to obtain a building permit are technically justified but not affordable for the majority of those affected is considered to be closer to the real situation.

<sup>20</sup> The Lilongwe Town Planning has been pushing for the revision of the rates.

<sup>21</sup> Data source: Town and Country Planning Guidelines (1987), Development Control Procedures for Lilongwe City.

<sup>22</sup> There is no evidence to independently confirm that officials receive bribes to fast track processing of plans or to flout some planning regulations.

However, this is characterized by a scenario in which obtaining a building permit is technically justified but not clearly and adequately disseminated. The Local Authorities have information about obtaining building permit which is not easily accessible to developers and the general public. The information on procedures and channels to be followed to obtain a building permit are not widely disseminated to developers or those seeking building permits. The Town and Country Planning Guidelines and Standards and other documents to do with planning cannot be purchased from local book stores. Thus, there is need to publicly disseminate steps and channels followed for applications for building permits so that the process can be understood and effectively pursued. Apart from press releases, the Local Authorities should develop and implement an IEC Strategy for dissemination of information to do with obtaining a building permit. The strategy should ensure that all guidelines including by-laws to do with planning controls and specifically planning permission are adequately publicized.

#### **3.2.1.11 Time Required to Obtain a Building Permit [LGI 9 (ii)]**

The Town Planning Act stipulates that applications should be approved within 60 days but most of the times, process of obtaining a building permits is fairly long (3 months or more) as there are many steps to be followed.

- Time required to obtain a building permit is usually long due to the following reasons:
- Long periods between town planning committee meetings,
- Poorly staffed and equipped local planning offices, for example Blantyre city council has one development officer
- inadequate resources to undertake site inspection,
- frequent postponement of technical and town planning committee meetings,
- delays in preparing decision notices and inefficient methods of communicating planning committee decisions.
- corruption – the process is prone to corruption. Although there is no evidence that informal payments are made to officials, incidences of such payments cannot be ruled out. As noted early, a case of informal payment was reported at the Lilongwe City Council.<sup>23</sup>
- Lack of enforceable checks and balances and lack of robust decision making bodies, like, the town planning committee

In general, the current situation is that all applications for building permits receive a decision within 6 months. However, to speed up the process it is important that the local authorities adhere to the time table for technical and town planning committee meetings. The composition

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<sup>23</sup> Data source: Lilongwe City Council Officials – City Planning Department. There is no overwhelming evidence that Council officials receive ‘speed money’. It is however perceived by some sections of society that informal payments can speed up the process.

of planning committees or decision making bodies need to be robust and not politically influenced. There is need to build capacity of local authorities in terms of human and financial capacity. For example, the city inspectors need to be adequately resourced to enable them undertake site inspections ahead of scheduled technical committee meetings. The local authorities need to develop guidelines on how to obtain a building permit and these guidelines should be widely publicized and accessible. Lastly, there is need to put check and balances in the system to make sure that the planning authorities are transparent and accountable.

### **3.2.2 Transparency and efficiency land/property taxes collection (based on LGI-10 and LGI-11)**

#### **3.2.2.1 Process of Property Valuation [LGI 10 (i)]**

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. 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 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 urbanization. As a result, the city councils have not been in control of new developments in urban areas.

It is recommended that several options be followed in order to improve on current state. The local authorities should ensure that valuations are done every five years and that supplementary valuations are done every 12 months as per provisions of the law. This will be prerequisite in capturing the real value of land and improvements therein at each given point in time. There is need for analysis of taxation implications of the valuation of property to harmonize valuation and taxation issues. The local authorities should consider coming up with special rating areas to

consider informal areas in urban areas which may be subjected to flat rates as may be determined. The Local Government Act needs to be reviewed and updated to keep with developments in urban areas. There was also a general agreement among the experts that there is need for a separate law on valuation that will act as a guideline during valuations rather embedding it in the local government act.

#### **3.2.2.2 Public availability of valuation rolls [LGI 10 (ii)]**

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. It was however noted that a lot of people had no access to the valuation roll because it is centrally kept by the local authorities. The city authorities need to improve on methods of disseminating the valuation roll to property holders to include different media. The property holders also need to pressurize the city authorities to get services and benefits with respect to the taxes levied on their property.

#### **3.2.2.3 Exemptions from property taxes are justified and transparent [LGI 11 (i)]**

There are limited exemptions to the payment of land/property taxes, and the exemptions that exist are clearly based on equity or efficiency grounds and applied in a transparent and consistent manner.<sup>24</sup> The Local Government Act gives exemptions on assessable property only on the following: 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.

With respect to the current situation, the experts recommend that the local authorities should undertake a review and an analysis of the justification of some of the exemptions especially where some are raising incomes e.g. churches who host public functions for money. Local government act which makes provisions for any exemptions needs to be updated to add or remove some exemptions for public interest. In addition, government needs to have up to date information on land and property there in through up to date valuations.

#### **3.2.2.4 Property holders liable to pay property tax are listed on the tax roll [LGI 11 (ii)]**

The Local Government Act calls for rates/duty or levy to be effected for all assessed property in the valuation roll. The panel members noted that the city councils do not have up to date information on how much property there is and the growth rate of the cities. This is due to

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<sup>24</sup> Application in a 'transparent and consistent manner' means that the basis for the exemption is clearly defined, widely disseminated and uniformly applied.



inability to regularly update the Quinquennial Valuation Rolls (QVR) and the Supplementary valuation roll due to lack of resources. They also noted that the valuation roll can miss out some properties due to complexity of the exercise and the limited time allocated for the exercise. In addition the system of deciding on the tax rate on property is not transparent as it involves only the city authorities. Based on these observations, the consensus of the panel experts was that between 50% and 70% of property holder liable for land/property tax are listed on the tax roll.

### **3.2.2.5 Assessed property taxes are collected [LGI 11 (iii)]**

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

### **3.2.2.6 Property taxes correspondence to costs of collection [LGI 11 (iv)]**

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.

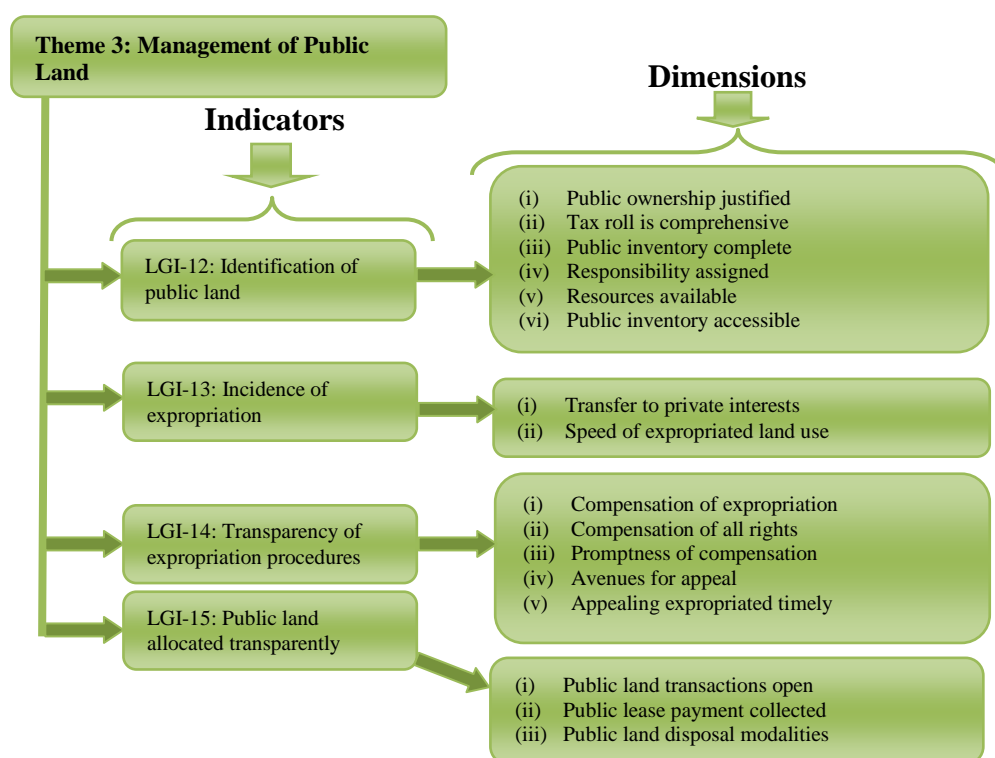
To improve the current situation with regards to valuation and taxation, the following recommendations are being proposed for consideration:

- ❖ There is need for strengthened development planning and control both in cities and at district level to ensure that the property taxes are maximized.
- ❖ The government in collaboration with other stakeholders needs to review the relevance and application of the valuation rolls in the local government act. This might call for a review of the local government act to clearly articulate separate valuation and taxation issues
- ❖ It is also necessary to decide legality of how rates on property are decided considering that there are no elected councilors as per requirements by the local government act to regulate and monitor how rates are decided.
- ❖ Malawi should develop a comprehensive income tax law on property that should be administered by either city council [local governments] or MRA [centrally], with one low tax rate say 15%, and property rates as allowable deductions. Alternatively, Malawi should develop a uniform property tax that caters for all property owners within cities across the country, at the same time drop the income tax on earnings.

### 3.3 Management of Public Land

This thematic area comprises of four Land Governance Indicators (LGI12 to LGI15) that assess management of public land by the State. Under each indicator are a number of dimensions as depicted in the figure below.

**Figure 6: Framework for Management of public land**



#### 3.3.1 Justification of public land ownership and management clarity (based on LGI -12)

##### 3.3.1.1 Public Land Ownership is justified and implemented at the appropriate level of government [LGI 12 (i)]

The Land Act (Cap 57:01) defines “public land” as “all land which is occupied, used or acquired by Government and any other land not being customary land or private land.” Public land includes any land held by the Government consequent upon a reversion thereof of any freehold or leasehold estate. The Land Act further defines “Government Land” as all public land other than public roads. Implicitly this makes all public land, with the exception of public roads, the property of the Government. It may therefore be concluded that Government is the sole owner of public land. There are however, agencies involved in the management of public land. These include the local authorities (city, town and district councils) and statutory undertakers, notably the Malawi Housing Corporation. Currently the majority of public land is land under

conservation mostly forest reserves, national parks and game reserve. These are estimated at 1,781,936.8ha. Other public lands are used for schools, hospitals and other government structures and service centers. Public roads also are part of public land and these are estimated to occupy 10,355.4ha. Land also acquires public land status after an area is a statutory planning area. Direct transactions between local people and investors are generally not permitted without first having expropriated the land. Proponents of this approach argue that expropriation frees the land from existing rights and encumbrances. Additionally, the state is in a position to protect the interests of ill-informed land owners from the so called ‘predatory investors’. In reality, the expropriation of land has not always worked to the advantage of the public. Such acquisitions have largely benefitted the private investors with the “land owners” not adequately compensated or properly resettled.

Regarding allocation of plots in urban areas by the state authorities i.e. converting public land to private land, the current system is not seen to be transparent and is susceptible to abuse. There is no independent body to check whether the allocations are on first come first served basis. All members of the allocation committee are within the Ministry and this could lead to cases of favoritism and corruption.

The current situation is that Public land ownership is generally justified by the provision of public goods at the appropriate level of government but management may be discretionary. Public land is managed by different government agencies including Ministry of Lands, other ministries, city councils and district council. However, there is no information on how much public land there is and how it is managed by the different entities. All communities are not able to identify different types of land including public land in their areas.

The land policy proposed creation of a distinction between Government Land and Public Land to eliminate mistrust and confusion among citizens and land administrators caused by the absence of any distinction between the two. . The policy reckons that ‘the public land designation was used to effectively expropriate customary land without compensation’, thereby perpetuating Malawi’s land problems. The distinction was proposed to make Government’s acquisition plans more transparent and was also deemed necessary for separating land held in trust by the Government from land acquired by the Government for which ownership is actually transferred to the Government. The policy recommended that Government Land should ‘refer exclusively to land acquired and privately owned by the government to be used for dedicated purposes such as government buildings, schools, hospitals, public infrastructure or made available for private use by individuals and organizations’. In addition, the policy recommended that Public Land should refer 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, Military sites, etc. The policy also classified as public land exclusive to members of the traditional authority all customary land

managed by Traditional Authorities with common access reserved as *dambos*, community woodlots, etc. In order to address the injustice, the Land Policy recommends that ‘any private land (including customary estates) acquired to be used for the benefit of the general public or for national development purposes will be valued and compensation based on the open market value paid to the owner for both the land and improvements’.

It is therefore recommended that all public land including government land should be properly surveyed and boundaries demarcated and there is need for public awareness to disseminate information on what is public land to local leaders and communities.

### **3.3.1.2 Complete recording of publicly held land [LGI 12 (ii)]**

Public land includes forest reserves, national parks, game reserve, land used for public buildings and utilities such as public schools and government health facilities, road reserves and ESCOM power lines way leaves.

The Malawi National Land Policy noted that statutory allocations for conservation areas such as National Parks, Game Parks, and Forest Reserves are not registered. This is equally true for Government allocations such as land under government buildings and other public infrastructure which in general, are not registered. Therefore such areas are often encroached upon and sometimes alienated out of ignorance.

It can be gleaned from the foregoing that overall public land is not clearly identified on the ground. However, topographic maps show the boundaries of conservation areas, albeit at a scale that cannot be precisely ascertained on the ground.

The individual expert analysis suggested that the best scenario that describes the situation in Malawi is that ‘Less than 30% of public land is clearly identified on the ground or on maps.’ According to the panel experts, between 30% and 50% of public land is clearly identified on the ground or on maps. 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. There has not been clear up to date recording of all public land by the authorities so that what are being used are old maps. In addition, there are no clear mechanisms to control abuse or encroachment on public land. The result is surrounding communities using part of public land (e.g. around schools, road reserves or in wetlands). This calls for urgent and systematic updating of land information for all types of land to clearly identify public land.

For Government land, the Land Policy advocates for the registration of every government land and for all dedicated government properties. It further states that ‘any allocation of government land for private use in urban or rural areas shall be registered at the corresponding District

Registry'. In the case of statutory allocations for public uses, such as land earmarked for National Parks, etc., after the subject land has been gazetted, a proper document should be prepared and registered with the Registrar of Titles.

### **3.3.1.3 Assignment of management responsibility for public land [LGI 12 (iii)]**

There is enough ambiguity in the assignment of management responsibility of different types of public land to impact to some extent on the management of assets. Most users of public land do not clearly know their roles on the land and they sometimes do not know what to do when disputes arise. They also do not share information with each other and with Ministry of Lands. It was also noted that different government institutions fail to deal with each other when there is abuse of land or land dispute.

It was indicated that sometimes there are no clear responsibilities on management of public land between those using it e.g. school and hospital authorities and the authorities such as Ministry of Lands or District Councils. As a recommendation, the government should clearly spell out responsibilities for management of public land. This could be included in the lease documents given to the government institutions using part of public land.

### **3.3.1.4 Resources available to comply with responsibilities: [LGI 12 (iv)]**

All panelists acknowledged that there is limited/insufficient human capacity and financial resources to ensure responsible management of public lands. They noted that there are either significantly inadequate resources or marked inefficient organizational capacity leading to little or no management of public lands. This results in very few activities being done and failure to control abuse of public land. For example, it was noted that there is very little inspection of trading centers as public lands by local authorities and Ministry of Lands. The panelists also noted that there has been little capacity building for land management staff in the past ten years.

The panel members settled on a consensus that there are significant constraints in the budget and/or human resource capacity but the system makes effective use of limited available resources in managing public lands. It was noted that government within its limited resources is trying to manage public lands and there are also some civil society organizations assisting government on sensitizing communities on land matters.

It is therefore, recommended that the ministries dealing with land and civil society organizations working on land should do more lobbying for elevating the profile of the land sector in national development priorities such as the Malawi Growth and Development Strategy. Secondly, government and civil society need to lobby for increased funding and capacity for land management from. Civil society working on land issues need to work in harmony and collaboration with government to increase impact and effectiveness of programmes. Lastly, there is need for intensive capacity building in the land sector to ensure effective land management.

### **3.3.1.5 Inventory of public land is accessible to the public [LGI 12 (v)]**

The expert panel upon discussions agreed that in Malawi ‘All the information in the public land inventory is only available for a limited set of public property and there is little or no justification why records are not accessible.’ 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.

It is therefore, recommended that there be wide dissemination of how land information is managed and can be accessed in order to enhance information sharing. Land information management should be decentralized to district and local levels to allow more people to access the information. In addition, different media should be used disseminate and share land information.

### **3.3.1.6 The key information on land concessions is accessible to the public [LGI 12 (vi)]**

According to the panel experts, the key information for concessions (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. It was noted that records and information on concessions and land allocations is available with the Ministry of Lands but is 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. It is therefore critical that government ensure that all land transactions are made transparently and the information disseminated to the public and concerned stakeholders using appropriate media.

## **3.3.2 Justification and fairness of expropriation procedures (based on LGI-13 and LGI-14)**

### **3.3.2.1 There is minimal transfer of expropriated land to private interests (LGI-13 (i))**

Based on the Land Acquisition Act (Cap. 58:04), the Minister is empowered to acquire land where he considers it desirable or expedient in the interest of Malawians to do so. The Minister may acquire the land either compulsorily or by agreement after negotiations. The guiding principle is that the affected properties be compensated for the loss in form of money or are replaced with equivalents elsewhere. The process of identifying the affected persons and scope of properties as well as assessment is the responsibility of the government.

Under the Town and Country Planning Act, the Minister responsible for Physical Planning may declare an area as a statutory planning area. The effect the declaration of an area as a town planning area is that the area becomes subject to statutory planning controls. According to current legislation, any customary land within the area so declared as a planning area becomes public. The declaration of an area as a planning is therefore invariably a form of expropriation of

land. The tenure holders are entitled to compensation. However, in many instances tenure holders are not immediately compensated after such declaration. Large parts of the areas declared as a planning area are usually premature for development and remain rural in character for a long period of time. As such there is no urgency to compensate and resettle the tenure holders. When an area is due for development, compensation is paid, usually not in a timely manner and is not fair. In calculating the compensation, land is considered of no value and the valuation only reflects improvement on the land.

Under current legislation, once an area is declared a planning area, the status of the land changes from customary tenure to public land. Within city boundaries in Malawi, customarily held land is taken over as public land with, in theory, compensation and relocation for the chief and his people. However, much of the compensation is still outstanding and relocations have been neglected (UN-HABITAT, 2010). This applies equally to all areas subject to an extension of the existing planning areas. Other circumstances that customary land acquires public land status include designated nature reserves (forests, national parks and game reserves), public roads, public institutions such as schools, hospitals, government offices, houses for public officers), national railway line, historic and cultural sites. Public land may also be created through surrender, termination or falling-in of any freehold or leasehold.

There are no comprehensive statistics on the amount of land annually expropriated. It can however, be mentioned that land acquired for purposes noted above is invariably used for the purpose it is acquired. Land in urban areas is an exception, since the government leases the land to private individuals or companies who hold and occupy the land to the exclusion of all others. As noted earlier, the land reverts to government upon surrender, termination or falling-in of leasehold.

Records at the land registry indicate that some land have been acquired by government for public use including conservation (forests, game reserves, and national parks - 1,781,936.8 ha), public roads (10,355.4073ha), public infrastructure (schools, health facilities etc) and historic and cultural sites. According to estimates by the Public Land Utilisation Study (PLUS) of 1998, the four major urban areas of Lilongwe, Blantyre, Mzuzu and Zomba occupy 120,000 ha of land which is 5.6% of all the public land in the country. The situation is unlikely to have changed much over the years as there has been no extensive extension of the city boundaries. For example, the new Lilongwe Urban Structure Plan added 12,000 ha to accommodate growth to 2030. In view of the foregoing, it can safely be stated that less than 10% of land expropriated in the past 3 years is used for private purposes on the basis that: all the land expropriated for the purpose stated is used for the purpose it was acquired and is thus not available as private

property; less than 10 percent of all the public land in the country is under urban development and there hasn't been extensive urban expansion in the past three years.<sup>25</sup>

The expert panel also noted that there has been little land (<10%) expropriated and used for private interest. The only examples they could mention were on proposed Nsanje Port city for urban expansion and under World Bank funded 'Kudzigulila Malo project'- Community Based Rural Land Development Project. This has involved the state obtaining land from customary land (in case of Nsanje port) to allocate to private developers and from private leasehold estate holders (in case of Kudzigulira malo project) to give to landless or land constrained rural farmers.

The expropriation of land for urban development indirectly entails change of status of the land from customary tenure type to public land and then to private land through creation of leaseholds. The Malawi National Land Policy and the Land Bill has proposed the creation of customary estates which will have a freehold/private land status. Under this arrangement, leaseholds will be created out of customary estates and the land transactions will reflect the true market value of the land and improvements on it. This will address the current concern of unfair compensation for land and property acquired compulsorily.

### **3.3.2.2 Expropriated land is transferred to destined use in a timely manner (LGI-13 (ii))**

The Land Acquisition Act (Cap 58:04) provides the statutory basis for the Government to acquire any piece of land for public use. Under Section 3 of the Act, the Minister responsible for land matters may acquire any piece of land, either compulsorily or by agreement. Where such land is acquired, compensation is paid to the land owner as may be agreed upon or determined the Act. The practice is that, once the government has an approved project and funding has been secured, the process of compensation is initiated through sensitization meetings by the traditional leaders, and assessment is done and compensation paid. This procedure ensures that invariably all the land expropriated is transferred to its destined use. In cases of urban expansion, the land expropriated may not be mature for development as development happens in a phased manner. In this regard, land that is expropriated may remain vacant for many years before actual development takes place. This attracts squatting.<sup>26</sup>

In general, it can be said that in Malawi, more than 70% of the land that has been expropriated in the past 3 years has been transferred to its destined use. This is based on expert opinions as there is no recorded information to precisely support this. The fact that land in urban areas can remain for many years before development takes place may require some strategies to deal with the

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<sup>25</sup> Data source: Public Land Utilization Study PLUS; Land Acquisition Act, Land Act, Lilongwe Land Registry, Lilongwe City Development Strategy 2010 – 2015. The data is outdated but expert judgment suggests that the data is largely accurate today looking at urban development trends and patterns where most development is accommodated within the confines of the existing city boundaries.

<sup>26</sup> Data source: Land Acquisition Act, Lilongwe Land Registry



problem of over bounding. While land use planning should ensure that adequate land is reserved for future development, the plans should be realistic about the land that is likely to be put to intended use within the planning period.

### 3.3.2.3 Compensation for expropriation of registered property [LGI 14 (i)]

The panel expert analysis showed that in Malawi, ‘Where property is expropriated, compensation, in kind or in cash, is paid so that the displaced households have comparable assets but cannot maintain prior social and economic status’. It was noted that the valuation, at the time of valuation may be appropriate but there are always delays in paying compensation by government due to budgetary constraints. All compensation is done by government through Office of President and Cabinet. In a number of cases, government fails to pay compensation and relies on developers to pay compensation. The delays in effecting compensation affect the attainment of prior social and economic status for those who have lost their land. According to the law, valuation report is valid for six months after that if compensation is not made the property needs to be reassessed. This provision is often ignored. Most do not receive compensation within 1 year. The process is implemented with some discretion. Delays in payments and failure to implement are also due to political sensitivities.

According to the experts, the process of assessment of compensation is based on market value, heads of claim by the owner, special value of the owner, injurious affection (e.g. subdivision made), severance allowance and disturbance allowance. For business entities, goodwill of the owner is also taken into consideration when determining compensation value. Compensation on agricultural land is based on yield loss and not market value of the land as in most cases land under customary tenure is considered to have little or no value. The matrix below provides more assessment on the compensation process (based on panel experts’ scores).

**Table 13: Assessment of process of compensation**

Status	Fairness of compensation	Compensated rights	Timeliness of compensation	Implementation	Comments
Registered urban property	Compensation enabling comparable assets but not maintenance of social and economic status	Some secondary rights recognized	Most do not receive compensation within 1 year	Implemented with some discretion	Delays in payments and failure to implement due to political sensitivities
Registered rural property	Compensation enabling comparable assets but not maintenance of social and economic status	Some secondary rights recognized	Most do not receive compensation within 1 year	Implemented with some discretion	Same as above

It is therefore, recommended that government should improve on timeliness of effecting compensation and minimize on relying on developers for compensation. There is also need for more funding in government budget for compensation coupled with decentralization of payment of compensation functions to district councils to assist in speeding up the process.

### 3.3.2.4 Compensation for expropriation of all rights regardless of the registration status [LGI 14 (ii)]

The expert opinion on this dimension is that ‘Compensation, in kind or in cash, is paid for some unregistered rights (such as possession, occupation etc.), however those with other unregistered rights (which may include grazing, access, gathering forest products etc) are usually not paid compensation. This is because although some secondary rights are recognized, not all rights are assessed for compensation e.g. grazing rights, access rights. Table 14 shows the legal provisions supporting compensation process.

**Table 14: Legal provision enabling compensations**

Affected Party	Legislation	Provisions
Land Owner/Occupier	Public Roads Act (Cap 69:02)	<ul style="list-style-type: none"> <li>• Payment of cash compensation based on loss or damage or destruction to structures. No compensation on land.</li> </ul>
Land Owner/Occupier	Public Roads Act (Cap 69:02)	<ul style="list-style-type: none"> <li>• land owners are entitled to reasonable compensation offered by government on customary land</li> <li>• land owners can be compensated for land to land if alternative land is available.</li> <li>• land owners can be compensated for land to money if there is no alternative land or if the offered alternative land is not economically productive</li> </ul>
Land Owner/Occupier	Public Roads Act (Cap 69:02)	<ul style="list-style-type: none"> <li>• no compensation to improvements on land within road reserves ( section 44)</li> <li>• no compensation to squatters unless they occupy the land continuously for a period of more than 7 years.</li> </ul>
Land Owner/Occupier	Land Acquisition Act (Cap 58:04)	<ul style="list-style-type: none"> <li>• The law stipulates that compensation based on assessment done by government and agreed by parties.</li> <li>• The law stipulates that compensation given when land is acquired.</li> <li>• The law stipulates that compensation not to exceed market value.</li> </ul>
Land Owner/Occupier	Land Act (Cap 57:01)	<ul style="list-style-type: none"> <li>• reasonable cash compensation to loss of affected persons for loss of land</li> </ul>
Land Owner/Owner	Customary Land (Development) Act (Cap 59:01)	<ul style="list-style-type: none"> <li>• The law favors land for land compensations</li> </ul>

Below is the summary assessment of the supporting matrix

**Table 15: Summary of compensation**

Status	Fairness of compensation	Compensated rights	Timeliness of compensation	Implementation	Comments
Unregistered urban property	Compensation enabling comparable assets but not maintenance of social and economic status	Some secondary rights recognized	Most do not receive compensation within 1 year	Implemented with some discretion	Delays in compensation by government
Unregistered rural property	Compensation enabling comparable assets but not maintenance of social and economic status	Some secondary rights recognized	Most do not receive compensation within 1 year	Implemented with some discretion	Same as above

### 3.3.2.5 Promptness of compensation [LGI 14 (iii)]

The analysis of the panel experts shows that ‘Less than 50% of expropriated land owners receive compensation within one year’ in Malawi. It was noted that if it involves a private developer, the process takes less time as the developer is asked to pay compensation but if it is only government, the process takes long. The recommendations put forward by the panelists include that; government should decentralize compensation payment and there is need to sensitize communities on the rights and responsibilities with respect to compensation e.g. their role in valuation process.

### 3.3.2.6 Independent and accessible avenues for appeal against expropriation [LGI 14 (iv)]

The panel experts noted that independent avenues to lodge a complaint against expropriation exist in Malawi at different levels through the court system or the office of the Ombudsman. However, there are some access restrictions because of the cost incurred to access these services such as transport and legal fees as such may only be accessible by mid-income and wealthy). It was also noted that most communities do not know their rights on compensation as such they may not know of any existence of such avenues or the need for accessing them.

The recommendations put forward on this dimension. There is need to establish local land tribunals to deal with appeal structure at local level as is proposed in the draft new land bill. At the first instance, village level land disputes will be heard by a Village Land Tribunal (VLT) comprised of the Village Headperson and at least four elected members of the community including women. Appeals from the Village Tribunal should lie with the Group Village Tribunal (GVT) that should also serve as a tribunal of first instance for cases in which the village setting may not be appropriate. Traditional Authority Land Tribunal (TALT) will hear appeals from the GVT. Appeals from the Traditional Authority level should lie to the District Tribunal of Traditional Authorities (DTTA) at the District Level. Any appeals from the District Tribunal of

TA's should lie directly to the Central Land Settlement Board (CLSB), not the High Court. However, there is need to sensitize local communities on available avenues for appeal.

### **3.3.2.6 Timely decisions regarding complaints about expropriation [LGI 14 (v)]**

The panel expert opinion on this dimension was that 'A first instance decision has been reached for more than 80% of the complaints about expropriation lodged during the last 3 years'. However, it was noted that this only applies to received complaints. The challenge is that most people in the rural areas do not lodge complaints or they do not know where to complain or appeal. This calls for the need for community sensitization and awareness to improve community understanding of their rights and the avenues for redress of any violations of their rights.

### **3.3.3 Justification and transparency of public land transfers (based on LGI-15)**

#### **3.3.3.1 Public land transactions are conducted in an open transparent manner (LGI-15 (i))**

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 Land and Urban Development and Local Authorities) involves submission of an application which is considered by an allocation committee. In theory, the committee is supposed to allocate plots on first come first served basis. However, the process is far from transparent and recent newspaper reports suggested that the higher authorities exercise pressure to ensure that highly placed individuals get preferential treatment and some allocations of residential plots were made to individuals who never submitted any application.

In the past, plots were offered at subsidized rate and as a result the revolving fund established to ensure opening up on new areas for development could not be sustained. Currently, 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, but it is doubtful if the campaign is yielding the desired results. 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 has expressed concern on overdue payment of development charges. It has been 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 mention that due to high demand for residential plots, there are many instances where plot allocation is done in advance of provision of infrastructure.

The share of public land disposed of 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 process to dispose of public land. As mentioned earlier, public land in Malawi is disposed of 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.

As highlighted in the table below, the process for allocating land for all categories is not done by open tender or auction but by ways other than open tender or auction. The considered market values are less than 50% of the market prices for all allocated lands.

**Table 16: 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
<b>Codes:</b>		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.

To make the disposal of public land more transparent and equitable, the government should make public the information leading to the allocation of residential plots to individuals. The government and local authorities should publicize list of applicants including when applied and those who have been allocated land. For major developments such as hotels, manufacturing plants, shopping malls, office blocks (especially in prime areas , such as city centres) the government should consider adopting an open tender as an appropriate process for disposing of public land. The use of open tender process would help curb speculation and only those bids demonstrating adequate financial capacity to develop the plots would be successful. For residential plots, preference should be accorded to first time applicants as long as they demonstrate some capacity to develop the plots.

### **3.3.3.2 Payment for public land sales/leases are collected (LGI-15 (ii))**

The percentages of payments of development charges are based on estimates from the Ministry of Lands and Urban Development and Lilongwe City Council Housing Department. More than 90% of the total agreed payments are collected from private parties on the sale/lease of public lands. The Government has recently been more aggressive in collecting development charges. Failure to act on demand notices has resulted in repossession of the allocated plots. In a country where political patronage is still very common, it is conceivable that the authorities do not exercise their powers of repossession equally across the board.<sup>27</sup>

It is important to mention that while a good percentage of the agreed payments are collected from the private parties, the payments are not always paid voluntarily. In some instances payments are made after threats of repossession. Where individuals are unable to pay for the plots, there is nothing to stop them from selling their plots at an open market value, and the seller would still make a profit from the proceeds after paying in full the development charges. In order to level the playing field, it is important that the transactions regarding public land are subject to public scrutiny. For example, repossessions and reallocations should be known to public.

It should also be noted that although initial payment of development charges when allocation has been made is usually complied with, payment of land rents are not always complied by occupants. The government also does not have sufficient capacity and resource to collect land rents or enforce payments. This calls for strengthening of the public land authority with financial and human resources to enforce collection of land revenues.

### **3.3.3.3 Public land is leased and/or sold at market prices (LGI-15 (iii))**

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

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<sup>27</sup> Data source: Lilongwe City Council and Ministry of Lands and Urban Development

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. 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 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 and Area 28 in Lilongwe. 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 centers. In such cases, the local authorities is 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 centers. 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.<sup>28</sup>

Public land is rarely or never divested at market prices in a transparent process. As per the foregoing discussion, it is evident that public land in Malawi is priced below the market price and the process of its disposition cannot be described as being transparent. A lot of secrecy surrounds the allocation process making it susceptible to corrupt practices. The pricing of public

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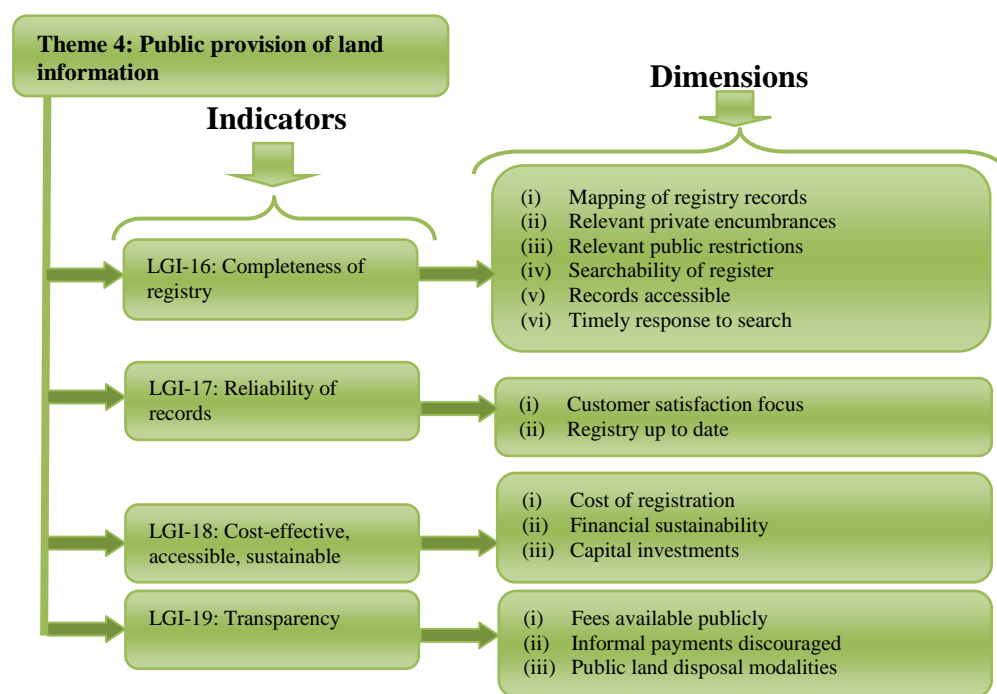
<sup>28</sup> Data source: Lilongwe City Council, Ministry of Lands and Urban Development, Investment Promotion Act (Cap. 39:03), Report of the Law Commission on the Review of the Land Related Laws, Government Printer, Lilongwe, March, 2010.

land should take into consideration the market prices in the interest of equity. The government should adopt more transparent forms of land allocation, especially in the more prime sites. This could include making information more readily available for public scrutiny and where appropriate, open tender procedures should be adopted to level the playing field. In case of land for investment, the Special Commission on the Review of the land-related laws noted that too much responsibility is given to government in terms of making land available for investment. The same reasoning could be extended to residential and other uses. There should be more private sector involvement in the delivery of serviced plots and the role of government should be restricted to that of regulation.

### 3.4 Public provision of land information

This thematic area on public provision of land information comprise of four land governance indicators LGI 16, LGI 17, LGI 18 and LGI 19). The four indicators are subdivided into several dimensions as illustrated in the **Error! Reference source not found.** below.

**Figure 7: Framework for public provision of land information**



#### 3.4.1 Reliability of land registries (based on LGI-16 and LGI-17)

##### 3.4.1.1 Mapping of registry records [LGI 16 (i)]

The panel members noted that registration in urban planning areas is based on deed plan signed by the Surveyor General. However there are problems in deed plans in that the Surveyor General's office has not been updating the main map due to human capital and financial



deficiencies at Surveys Department. There are also some reported malpractices resulting in fake deed plans being produced. For rural estates, registration has been based on sketch maps and not fully survey maps. Recently, the Ministry of Lands announced that sketch plans are not permissible for registration but only full survey maps, though this will require capacity building in the Survey Department. However, in the short and medium run, use of satellite imagery and handheld GPS would be a solution. According to the panel experts, 'Between 70% and 90% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre. According to central land registry officials, the figures are close to 100% because according to them property can't be registered if not identified. Any registered property must have a plan. However, some registry map sheets are in poor state of repair and make it difficult for identification.

#### **3.4.1.2 Economically relevant private encumbrances are recorded [LGI 16 (ii)]**

The current situation in Malawi is that 'Relevant private encumbrances are recorded consistently and in a reliable fashion and can be verified at low cost by any interested party. All relevant encumbrances are recorded in the charge register and can be obtained at the registry upon payment of search fees of MK5000. There are two types of registers i.e. Deeds and Charge registers but they refer to one facility. They are therefore, recorded side by side with the registry. The encumbrances include mortgages, cautions or court orders and disputes over that property. The main challenge noted is that the land registry is not properly supervised and organized so that some encumbrances may not be recorded or people may obtain information without payment of search fees. There is inconsistency of practice across the three registry offices, Lilongwe, Blantyre, Mzuzu. The BESTAP project is attempting to address this through the introduction of a standard operations manual, IT and a more structured approach to staff training.

#### **3.4.1.3 Socially and economically relevant public restrictions or charges are recorded [LGI 16 (iii)]**

According to the experts on the panel and the registry, the current status for this dimension in Malawi is that relevant public restrictions or charges are usually recorded and in a reliable fashion and can be verified at a low cost by any interested party. Charges e.g. search fees are recorded and payment are made at a central accounts office. For security reasons, only registry officials are allowed to enter and search documents in the registry.

There are very few public restrictions that can be considered and these may include public roads and road reserves, reserved areas, historical sites and other protected areas. However, there are many valuable uses of land that are not protected. These include river line areas, forest areas, national parks, watershed areas and mountains. These are considered to be public land but nobody has title deeds over them as they are easily encroached or misused. These require their restrictions to be clearly recorded and publicly disseminated.

#### **3.4.1.4 The registry (or organization with information on land rights) is searchable [LGI 16 (iv)]**

According to registry officials, in the land registry you use the parcel number. In the Deeds Registry you will require the deed reference number to constitute a search. In Malawi, the Parcel Number is used to identify you and your particulars when searching for documents in the registry. This means that the title deed number represents the parcel to identify you and your property.

However, some local authorities e.g. City Councils also keep some form of land records or registries regarding their areas of jurisdiction. Such data is useful when renewing city rates and recording properties existing in their areas. A local level a comprehensive program to compile and reorganize leasehold records (registered land) and all supporting documents by location and according to the Traditional Authority was commissioned to prepare the records for transfer to their eventual District Land Registry Offices.

The Ministry of Lands, Housing and Urban development with support from the World Bank and other donors (under BESTAP Project) and with technical support from Land Equity International is undertaking an initiative to modernize and computerize title and deeds registration systems and preserve the current manual land records through digitization. All manual records have been scanned and digitized and efforts are currently underway to put in place a modern and computerized system of land registries within 2011/2012 financial year.

#### **3.4.1.5 Accessibility of records in the registry (or organization with information on land rights [LGI 16 (v)]**

Copies or extracts of documents recording rights in property can only be obtained by intermediaries<sup>29</sup> and those who can demonstrate an interest in the property upon payment of the necessary formal fee. Title holder can get a copy of a deed plan from the surveyor general upon payment of MK1500. A title holder can also get copies of land title and land certificates from the registry upon getting police report and payment of charges. Lawyers may also request information from the registry using a search warrant issued by the courts.

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<sup>29</sup> Intermediaries in relation to interested parties in land ownership records could include notaries, lawyers, and providers of housing finance etc., who assist with dealings in land.

#### **3.4.1.6 Timely response to a request for access to records in the registry (or organization with information on land rights) [LGI 16(vi)]**

Copies or extracts of documents recording rights in property can generally be obtained within 1 week of request considering that all extracts of documents from the registry have to be certified by the land registrar and this may take some time. As long as all necessary documents are available, the registry officials try their best to provide timely information.

#### **3.4.1.7 Focus on customer satisfaction in the registry [LGI 17 (i)]**

The panel experts felt that there are meaningful published service standards, but the registry does not actively monitor its performance against these standards. According to the registry officials, their work is guided by standards provided in Registered Land Act (Cap 58:01) hence strive to do the best in assisting their clients and monitoring their performance. The challenge may be that the law is not publicly disseminated for the public to understand the standards followed, hence, the development of a User Guide to Services under the BESTAP project. The other challenge is the limited capacity of the registry both human and financial to deal with customer demands.

It is therefore recommended that the government should enhance capacity of the registry both human, financial and equipment. There is also need to sensitize the general public on the available standards and their role to monitor performance of the registry.

#### **3.4.1.8 Registry/ cadastre information is up-to-date [LGI 17 (ii)]**

Registry/cadastre information is not up-to-date because the responsible authorities or organizations are seriously under-staffed and have archaic technology which is very slow. Much effort must be put into capacity building and development in terms of both human resources and capital (equipment). These should be underpinned by availability of enough financial resources on a continuous basis. Accessing modern technology without enough operational cost will just further impoverish the organizations.

Visits to the Ministry of Lands, Housing and Urban Development revealed the deploring situation regarding human resources, capital (equipment, space, furniture, storage and buildings) and the low levels of financial subventions made to the organization. Because of the vicious circle of low levels of resources and poor working environment, the capacity to generate income is very minimal. The traditional approach to work ethics is contributing handicap of any progress on the road map. This is a serious issue that the Ministry need to get to grips with ahead of completion of the BESTAP projects otherwise there will be a lot of wasted effort

There is high vacancy rate in all technical departments of the Ministry of Lands, Housing and Urban development. Currently the ministry has a 69.6% vacancy rate for technical staff (933

vacancies for technical staff out of the required 1340). For example the department of Physical Planning has a vacancy rate of 54% and the most affected functions are supervision, monitoring and evaluation. These functions are important for the orderly development of the environment both in rural and urban areas.

Between 50% and 70% of the ownership information in registry/cadastre is up-to-date. Ranking of this dimension was done by comparing existing cadastre with the physical situation on the ground. It will not be exaggeration to indicate that a mismatch exists between cadastral maps and actual situation on the ground. It was noted that there is a time lag for records to be updated once a transaction has been effected.

### **3.4.2 Efficiency and transparency of land administration services (based on LGI-18 and LGI-19)**

#### **3.4.2.1 Cost of registering a property transfer [LGI 18 (i)]**

The procedures or documentation required for registering a property transfer involve the following activities which bear costs associated with their transactions as percentages

- a) Documentation.
- b) Creation of deed if necessary.
- c) Signature and attestation by witness.
- d) Delivery of documents.
- e) Stamp duty (tax).

The cost of registering a property transfer at the registry is a fixed rate of MK5000 which is considered to be low by the registry officials although some poor clients still complain that they cannot afford this fee. However one needs to engage a lawyer for such transactions and they charge transfer fees and consent fees. Legal charges may go up to 10% of the value as such this raises cost of registration. There are also many institutions dealing with land management and this creates unnecessary beauracracy. It is therefore safe to conclude that the cost for registering property transfer is equal to or greater than 5% of the property value.

In traditional housing areas, the transfer cost is MK2000 and what is needed is the physical presences and identity for the owner. This is less than 1% of the property value. There is, however, a need for civic education to make the general public aware of most of the costs associated with land or real property transactions. The Ministry of Lands must play a major role of civic education.

#### **3.4.2.2 Financial sustainability of the registry [LGI 18 (ii)]**

According to the experts consulted including the central registry officials, the registry is not financially viable and cannot sustain itself through the fees it collects. Comparing the amount of collected fees and the expenditure requirement for operation on the monthly basis, the

expenditure is reported to be high although definite figures could not be established both at Blantyre and Lilongwe registries. Total fees collected by the registry are less than 50% of the total registry operating costs. Most of the fees are fixed rates and are considered low by the officials.

The government needs to work out a revenue generation system for the Registry and monitor its operation costs for a period of say one year so as to compute workable fees which can initially sustain its operations. In the long run interventions which could lower operational costs should be adopted. There is an ongoing study to undertake financial and economic analysis of the land information management system pilot projects for Mchinji district and Lilongwe. The main goal of assignment is to determine the financial and economic viability of the LIMS for the improvement of land transaction services. The overall objective is to develop financial and economic options that will ensure that clients of LIMS and the national economy's benefits are known, visible and outweigh the costs.

#### **3.4.2.3 Capital investment [LGI 18 (iii)]**

Current capital investment in the registry system is low and not up-to-date. There is lack of adequate good furniture, equipment, stationery and storage facilities. All these have an effect on time for searching information. The situation is not any different from the other registries in the country.

There is little or no capital investment in the system to record rights in land. There are low levels of investment (capital, human, equipment) in the registry as in any other government department. For the system to be operating on a better level there has to be massive modernization of the registries with equipment upgrade and increased budgets. Initiatives through the BESTAP project to support capital investments for the registry covering the national office and three regional offices are in progress. More than US\$1million is being invested in physical capital including computers, software and networking systems for the registry. The equipment is set to be installed in 2012. The project is also involved in capacity development of existing staff.

#### **3.4.2.4 Schedule of fees is available publicly [LGI 19 (i)]**

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 this may not be accessible by the majority and the information is not also publicized through other media forums. People also do not appreciate the rationale for existing land transaction fees because there is no transparency and public involvement during their formulation.

#### 3.4.2.4 Informal payments discouraged [LGI 19 (ii)]

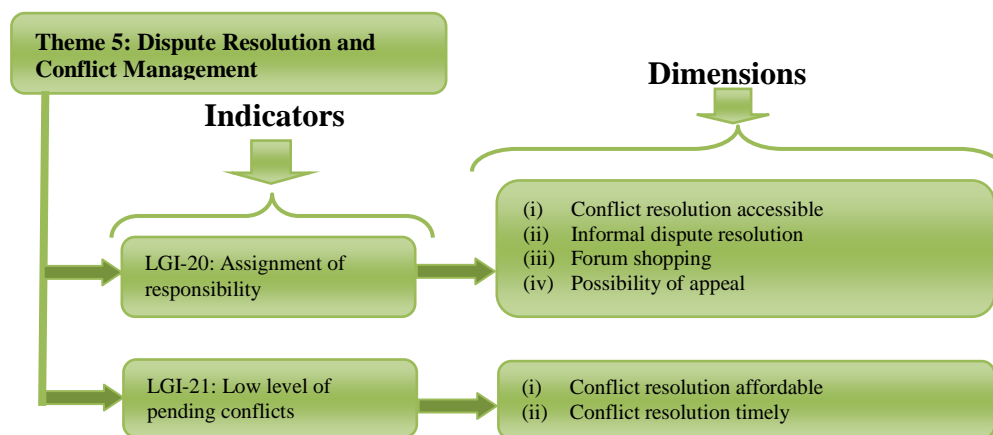
According to the panel experts, mechanisms to detect and deal with illegal staff behavior are largely nonexistent. Members noted that senior staff in the Ministry of Lands are supposed to supervise and monitor the operations of the registry but there are no established mechanisms to deal with illegal staff behavior. However the registry officials in Lilongwe indicated that although incidences of illegal staff behavior happen, they are dealt with promptly using available rules and procedures in the government service if caught. The Anti Corruption Bureau also investigates and takes action on all reported cases of illegal staff behavior relating to land.

To improve the operations of the registry, the government should increase its investment in human capital for the registry to include diverse trained personnel such as lawyers and land administrators. Secondly, registry systems need to be computerized, modernized and networked to check illegal practices and speed up registry processes. To improve staff capacity, study tours and attachments for staff of the registry would help through learning what other registries are doing in other countries and monitor implementation of the same.

### 3.5 Dispute Resolution and Conflict Management

This thematic area covers 2 Land Governance Indicators (LGI 20 & LGI 21) relating to dispute resolution and conflict management in the land sector. These indicators are further subdivided into a number of dimensions as depicted in the Figure 8 below.

**Figure 8: Framework for dispute resolution and conflict management**



#### 3.5.1 Accessibility of conflict resolution mechanisms (based on LGI-20)

##### 3.5.1.1 Accessibility of conflict resolution mechanisms [LGI 20 (i)]

The Constitution of Malawi provides for an elaborate judicial system from Magistrates courts, High Court to the Supreme Court of Appeal to deal with settlement of any disputes. Any matter requiring redress can be dealt with adequately through these systems. It is important to note that

jurisdiction to deal with land matters is distributed amongst several bodies that have jurisdiction to deal with the matters at first instance, namely:

### **The High Court**

The High Court has unlimited jurisdiction to deal with all legal issues, this includes all land matters, as a court of first instance. Most reported cases concern cases dealt with by the High Court.

### **Resident Magistrate Courts**

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 Registered Land Act empowers 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 £ 200.00. However, Sections 36 and 37 of the Land Act empower 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.

### **Local Courts**

Act No 9 of 2011 establishes the Local Courts. This Act empowers the establishment and jurisdiction of Local Courts in areas that the Chief Justice deems appropriate. This Act repeals and replaces the Traditional Courts Act. The President assented to the Act. The Local Courts Act does not confer on local courts jurisdiction to deal with land matters. The general tenor of the institutional legal framework is that except in limited circumstances currently provided substantial land matters whether at custom or common law must be dealt with by the High Court. Magistrates Courts may deal with the specified jurisdiction conferred on them.

In addition to the court system, there is also a local level dispute resolution system especially applicable to customary land tenure. The local chiefs at village and Traditional Authority levels provide first line of dispute resolution at local level. Beyond the local chiefs are the district councils headed by the district commissioner who also deal with land disputes as a referral point.

Dispute resolution of land matters is currently unsatisfactory in that multiple players are involved in the process. The main players are currently 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 excludes access to courts by a large number of the rural population, who have to do with informal proceedings before chiefs.

An important aspect of the Malawi land policy is the proposal for the establishment of a more democratic and transparent land conflict resolution system in the form of District level and Traditional Authority level Land Tribunals. The lowest level of this system is the Village Land Tribunal (VLT) that is to be headed by the village headperson and in addition has at least four elected members from the village including women. Appeals from the VLT will go to the Group Village Tribunal (GVT) that consists of the Group Village Head assisted by four Village Headpersons. This is also the appropriate place for land disputes that go across the borders of the villages in the group. The TA Land Tribunal (TALT) will deal with disputes related to customary land within the TAs and appeals from GVTs. The Chief will chair the TA Land Tribunal and the Tribunal will consist of minimum four members from the community including women. The Special Law Commission on the review of land related laws provides more detailed guidelines for the Central, District and TA Land Tribunals (Customary Land Bill, Part 5). Among others it specifies that the TALT shall consist of six members of the community appointed by an Area Development Committee, two of which shall be women. At least one of the members should have legal or administrative experience. The other three shall be appointed on the basis of their knowledge of the area, including boundaries and people settlement, their experience in handling social issues, and their good standing in the Community. A further requirement is that a member of a Customary Land Committee shall not be eligible to be appointed to the Tribunal. Decisions by the TA Land Tribunal will be with simple majority voting. These provisions await enactment of the new land laws to be effected.

The overall current situation with regards to this dimension is that ‘Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized. There is clear system for dispute resolution from community level starting from village chief to Traditional Authority, then to district councils and thereafter to the courts (magistrate or high court). With traditional leaders, people are able to access primary justice. This is recognized in the Chiefs Act. There are other platforms or initiatives for accessing justice being promoted in a number of districts which include chief’s councillors and primary justice forums.

### **3.5.1.2 Informal or community based dispute resolution [LGI 20 (ii)]**

As indicated in the above sections, informal dispute resolution mechanisms are provided through the local chief from village chiefs to Group Village chiefs to Traditional Authority chiefs. The chiefs are recognized under customary law which varies from one area to another but the powers of the chiefs are also legally recognized under the Chiefs Act. Beyond these, the cases are 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. There are informal systems through the traditional leadership under the customary systems. However, in many cases the judicial people in formal courts tend to challenge decisions of traditional leaders on conflicts as lacking legal basis when brought to court. In addition, the decisions of traditional leaders under customary law can be influenced or based on personal relationships. There is therefore, a need to reconcile customary law and written laws so that they can interrelate and be harmonized.

The Malawi land policy proposes a dispute resolution process characterized by, in ascending hierarchical order, a Village Land Tribunal, a Group Village Tribunal, a Tribunal at Traditional Authorities level, a District Land Tribunal and the Central Land Settlement Board.

#### **3.5.1.3 Possibilities for Forum shopping [LGI 20 (iii)]**

In Malawi, there are parallel avenues for conflict resolution on land related matters. These are the traditional chiefs and the formal courts system. One can pursue these channels 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 traditional/administrative system for reference but they are not mandated. There are also incidences where they court system have ignored traditional 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. The proposed establishment of the tribunals for land related disputes has to take cautious efforts to establish clear linkages and synergies with the formal court systems for sharing information and evidences and for appeal opportunities.

#### **3.5.1.4 Possibility of Appeals [LGI 20 (iv)]**

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 be never 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, most experts recommend the establishment of local land tribunals to specifically deal with land disputes. This is proposed in the draft land bill to amend the current land law which is awaiting parliament approval.

### 3.5.2 Efficiency of conflict resolution (based on LGI-21)

#### 3.5.2.1 Conflict resolution in the formal legal system [LGI 21 (i)]

The expert analysis on this dimension concludes 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 (Table 17).

**Table 17: 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

The panel experts based on their experience 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.

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.

To deal with increasing land related disputes, the following policy recommendations are advanced:

- Separate Land Tribunals specialized in land matters (like the Commercial Court) should be established to deal with all aspects of land Law i.e. Customary Law, Leasehold Law and Freehold Law and all other interests and rights associated with such holdings. The tribunals should be at all levels starting at community level up to district level as well as national level. When established such Tribunals should initially adopt informal methods of dispute resolution such as Mediation, or Arbitration, and appeals should be confined to one higher court only unless leave is granted by the court of decision for a further appeal (s). The rules may prescribe the time limit within which any land matter should be completed. In commercial cases the High Court of Malawi has established such a system.
- Alternatively, since Magistrates and local courts are/shall be found all over the country, jurisdiction should be given to these courts to deal with certain aspects of all forms of land disputes, such as boundary disputes or inheritance (where the value of the property is not phenomenal) and the protection of minors or estate property. The appeal process will follow that provided by the Courts Act.
- A study may be required to review and consolidate the procedures and enforcement methods currently available in all land disputes and if approved definite recommendations for the establishment of National Land Tribunal system. The judiciary will have to be involved in such a study or consultation.
- The processes of tenure change in indigenous societies in changing environments needs to be better understood, and ways of facilitating community-initiated change, rather than state imposed change, need to be found. Studies of indigenous mediation and dispute resolution techniques and how they promote sustainable resource management, and their relationship to the wider justice system are important.
- Land tenure practices provide African jurists and legislators with fertile ground for exploring new ways of making the position of local actors more secure. Careful observation and analysis of land tenure practices give researchers the opportunity to explore new territory, since these practices eschew the well-worn principles of customary land tenure, but without submitting to the rigours of “modern” State legislation.

### **3.5.2.2 Speed of conflict resolution in the formal system [LGI 21 (ii)]**

All experts consulted agreed that a decision in a land-related conflict is reached in the first instance court within 1 year for less than 50% of cases. Causes of delay in hearing and concluding land dispute cases included: cases brought before court using wrong procedures, frequent adjournments, too many witnesses paraded before court, missing of original court file or documents, delay by counsel for plaintiff or defendant and retirement or death of honourable

judge before the conclusion of case.<sup>30</sup> The experts also noted that in most cases, land cases take long to deal with at all levels due to the search for credible evidence and having many interest holders.

The proposal to establish land tribunals to deal with only land cases would assist to reduce the time. In addition, there is also need to improve on information management at the land registry to improve access to information and reduce alleged fraud at the registry. This improvement may involve computerization of the registry and adding photos to title deeds. Currently, the efforts are being initiated through the BESTAP project with support from Land Equity International to modernize the registry.

### **3.5.2.3 Long-standing conflicts (unresolved cases older than 5 years) [LGI 21 (iii)]**

The individual expert analysis showed that the share of long-standing land conflicts in Malawi is greater than 20% of the total pending land dispute court cases. On the other hand the expert panel (based on experience of the available legal practitioner in the panel), felt that share of long-standing land conflicts is between 10% and 20% of the total pending land dispute court cases.

Key reasons why some cases take long time to be resolved include frequent adjournments, too many witness paraded before court and failure to submit skeleton arguments. Main stakeholders involved in long-standing unresolved dispute cases are chiefs, local Communities, District Commissioners, land Registrar/Land Commissioner and Courts.<sup>31</sup>

This situation calls for a need to establish proper and functional local land boards to properly administer land to reduce land disputes and local land tribunals need to deal with land disputes. Alternatives mechanisms to using judicial system that are available to resolve land dispute should be promoted such as arbitration and mediation.

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<sup>30</sup> Data source: court registers and judgments of the High Court of Malawi, Blantyre and the District High Court in Zomba and the Chief Magistrates Court in Zomba.

<sup>31</sup> Data source: data was collected from court registers and judgments of the High Court of Malawi, Blantyre and the District High Court in Zomba and the Chief Magistrates Court in Zomba.

# POLICY ANALYSIS AND POLICY RECOMMENDATIONS

## 4

This section provides an overall analysis of land governance in the country as per five thematic areas. A scale of A to D for 80 dimensions in assessing land governance has revealed that land governance in Malawi is generally weak. Of the 80 dimensions, 12 dimensions (15%) ranked of strength (A), 24 dimension, (30%) were ranked of fairly strength. Otherwise, the rest of the dimensions ranked very weak in assessment of land governance.

Basically, land governance in Malawi is robust in the following areas

- Economically relevant private encumbrances
- Economically relevant public restrictions or charges
- Searchability of the registry (or organization with information on land rights)
- Property holders liable to pay property tax are listed on the tax roll
- Assessed property taxes are collected
- Independent and accessible avenues for appeal against expropriation
- Speed of land use change
- Public availability of valuation rolls
- Transfer of expropriated land to private interests
- Speed of use of expropriated land
- Appealing expropriation is time-bounded
- Exemptions from property taxes are justified

Areas that are of fair strength (score B) include:

- Efficient and transparent process to formally recognize long-term unchallenged possession
- Clear process of property valuation
- Modalities of lease or sale of public land
- Mapping of registry records
- Accessibility of records in the registry
- Timely response to a request for access to records in the registry
- Schedule of fees is available publicly
- Accessibility of conflict resolution mechanisms
- Focus on customer satisfaction in the registry
- Registry/ cadastre information is up-to-date
- Administrative overlap
- Land tenure rights recognition (rural)
- Use of non-documentary forms of evidence to recognize rights
- Formal recognition of long-term, unchallenged possession

- First-time registration on demand is not restricted by inability to pay formal fees
- First-time registration does not entail significant informal fees
- Restrictions regarding urban land use, ownership and transferability
- Restrictions regarding rural land use, ownership and transferability
- Clear land policy developed in a participatory manner
- Public land ownership is justified and implemented at the appropriate level of government
- Complete recording of publicly held land
- Compensation for expropriation of ownership
- Information sharing
- Conflict resolution in the formal legal system

To have a snapshot of land governance statistics for the five thematic areas all the scores for the land governance assessment are summarized in Table 18 below.

**Table 18 : Summary of dimension scores by number and percent**

Thematic Area	No of dimensions scoring				Total (%)
	A (%)	B (%)	C (%)	D (%)	
Legal and Institutional framework	0 (0%)	11 (41%)	13 (48%)	3 (11%)	27 (100%)
Land Use Planning, Management and Taxation	5 (29%)	1 (6%)	6 (35%)	5 (24%)	17 (100%)
Management of Public Land	4 (25%)	4 (25%)	6 (38%)	2 (13%)	16 (100%)
Public provision of land information	3 (23%)	5 (38%)	1 (13%)	4 (31%)	13 (100%)
Dispute Resolution and Conflict Management	0 (0%)	2 (29%)	4 (57%)	1 (14%)	7 (100%)
<b>Total</b>	12 (15%)	23 (29%)	30 (38%)	15 (19%)	80 (100%)

Most of the scores as summarized in the table above shows that most of the dimensions rank weakly (about 45% of dimensions) in land governance assessment. Weak Legal and Institutional framework and dispute resolution and conflict management contributed a lot towards poor land governance in Malawi. This is a necessary condition to reform policy towards improved land governance in Malawi.

### **Thematic Area 1: Legal and Institutional framework**

#### **Recognition and enforcement of rights**

The assessment has shown that most rural land is under customary tenure where the rights of the holders though legally recognized are not protected by the same law as they are governed by customary law and inheritance systems. This although has some traditional security based on

kingship, there are clear evidence of tenure insecurity for some groups such as women and children and the land continues to be fragmented to unsustainable levels with population growth. As part of the already initiated policy reform, a number of policy recommendations have been proposed in this assessment.

- The government should expedite the passing of the new land law so that customary land can be titled and registered to guarantee tenure security, though, this requires large scale training and capacity building exercise would be required to support this goal. In line with the land policy, the new law takes recognition of the on-going evolution of customary tenure towards individualized rights and therefore recommends for more customary tenure security by granting full legal recognition and protection through creation of customary estates. The law will also empower local communities to participate in land administration through local land boards and tribunals. With the proposed changes, the administrative role and land management responsibilities of traditional leaders will need to be redefined to compliment formalization of customary estate and safeguarded by the statute.
- Emphasis should be put on the strengthening of local institutions with responsibility for managing land rights and related disputes building on local knowledge and existing land management practices at local level.
- The government should harmonise customary law and enacted laws especially on inheritance issues to improve security of tenure and property rights for marginalized groups such as women and children. The new law should strengthen the land rights and tenure security of the spouse in cases of death of the partner. One way is the provision of a secure legal basis for the joint ownership of land by spouses or, at least, the prevention of the disposition of a household's land assets by husbands without the consent of their wives. The second approach would involve the establishment of legal instruments so that women can maintain their rights to land upon the death of their spouses. Women also need to be involved in local land administration and conflict resolution forums. The proposed Customary Land Bill, Part 5 provides more detailed guidelines for the Central, District and TA Land Tribunals. Among others it specifies that the TA Land Tribunal shall consist of six members of the community appointed by an Area Development Committee, two of which shall be women.

The study has shown that a lot of effort needs to be put in securing land rights of the poor in the rural areas as well as in urban/peri-urban areas. This will mainly involve demarcation, titling and registration as provided for in the new land law. To support this, a number of actions are proposed:

- There is need for public intervention in large scale/mass demarcation/surveying to assist poor holders in the process of land individualization.
- Surveying procedures should be reviewed and simplified to reduce costs, e.g. use of satellite imagery and handheld GPS.

- Use of community mapping approach should be promoted a vital part of the demarcation and titling process in Malawi aimed at empowering individual citizens and communities to take active interest in their affairs.
- The government in collaboration with civil society organizations should implement programmes to widely disseminate land related policies and laws to allow people to understand provisions relating to their land rights
- Decentralisation of land administration should be promoted and put in practice to empower district authorities and local communities to participate in land matters in an orderly fashion.
- Capacity building on land administration should be strengthened through the public universities (University of Malawi and Mzuzu Univesity), Natural Resources College which run land based courses. The Ministry also needs to develop its own capacity to train and retain staff.

This study has shown that full legal recognition of urban land tenure is for most people hampered by some obstacles which include rapid urban growth, the requirements and costs of formal title registration and weak land administrations capacity. Resulting of which is 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. It is, therefore, recommended that government intervention should focus on facilitating self-managed process of housing plots acquisition being undertaken by low-income households. Sites without services scheme should be considered whereby the urban land managers identify all unconstrained developable spaces within the city boundary and provide planned plots that take into account the perceived and allowable population densities for the urban poor. There is need to seriously consider the issuance of Certificates or licences and permits for occupation to mitigate the issue of tenure insecurity to the urban poor. Awareness campaigns on the processes required for requesting title should be the order.

There is need for extensive support in investment capacity for the poor urban dwellers once tenure status is secured. Failure to recognize the right to housing is detrimental to enhancing security of tenure. This calls for effective support for the local authorities to housing needs of the poor.

The government needs to deal with the problem of weak land administration systems in urban areas to ensure that regulations and legal provisions are implemented and adhered to. This will also lead to an improvement in service delivery to reduce time it takes for leases to be granted. In case of traditional housing areas, the government should support regularization to provide tenure security for the holder.

To reduce growing informality in urban areas, there is need for local authorities to ensure that provisions of the Town Planning Act are followed and adhered to. In addition, there is need to



properly store all data regarding approved developments, monitor and evaluate developments on a continuous basis. There is need to have both hard copies and computerized records concerning approved developments in the local planning areas.

Planning areas must not be extended to capture customary areas unless the people in such areas are fully compensated and resettled elsewhere maintaining their livelihoods, customs and tradition. The authorities should speed up process of compensation payments and resettlements by empowering local authorities to effect compensation instead of waiting for central government. The local authorities should also speedily implement projects and enforce changes in land use after compensation has been made.

A program to methodically compile Land Registers to secure the property rights of most Malawians is needed particularly because most land claims are held without documentary evidence under customary tenure. However, this needs to be an extensive donor funded programme to ensure its Effectiveness. It is recommended that the authorities should speed up passing of the new land acquisition and compensation laws to ensure clear assessment of claims for compensation. The new land law provides for land acquisition, compensation of claims. The country should come up with a clear condominium law to guide management of common property considering increasing developments of apartments in the cities.

### **Restrictions on rights**

There are a series of regulations and restrictions on urban land right that are for the most part justified on the basis of overall public interest but are not fully enforced. These restrictions include land transactions, land ownership, owner type, use, size of holding and price. Legal framework/instruments for restrictions include the Land Act, The Town and Country Planning Act, Town Planning Guidelines, Statutory Urban Plans (structure plans, detailed layouts). The local authorities are the planning authorities in the major cities and are responsible for the enforcement of planning controls (land use). The Ministry of Lands has the ultimate authority over the transfer of interest in land although local authorities and Malawi Housing Corporation are involved to an extent in land transactions in land belonging to them. In the spirit of decentralization and according to the Land Policy, land transactions are to be decentralized to the district level, with district registries established.

In addition, there are some restrictions on rural land use relating to land transaction, land ownership and ownership types. These restrictions which are mainly top-down have, however, met various reactions when enforced. There are also unwritten restrictions within customary land tenure (e.g. cutting down of trees in graveyards) which are usually enforced and need to be taken advantage of. Restrictions especially those that do not take into consideration livelihoods needs of the rural community are generally challenged and difficult to enforce.

Generally, it can be said that in most cases, there is weak enforcement of restrictions and regulations. Thus, there is need to fully implement the decentralization policy to empower local authorities to enforce restrictions and regulations. In addition, civic education for urban dwellers on procedures and restrictions is a prerequisite. Lastly, there is also need for authorities to work on eliminating artificial land shortages in urban areas by making more land available and accessible for more people. This would help reduction of corruption.

### **Clarity of institutional mandates**

There is need to provide for clear mandates for different agencies in the dealing with land matters. The number of institutions and statutory agencies dealing with land matters need to be streamlined in order to avoid confusion and overlaps over jurisdiction. The Ministry Lands, Housing and Urban Development has to develop and strengthen its capacity to enable it to provide land services (Land administration and management) to the public in an efficient and effective manner in order to promote and encourage sustainable management and utilization of land and land based resources. The ministry should establish clear coordination mechanisms with other government ministries and agencies to avoid overlaps in land administration. These include: the Ministry of Agriculture, Irrigation and Water Development which is primarily responsible for agriculture land and harnessing water resources and the Ministry of Natural Resources Energy and Environment which has a duty to manage forest resources, fisheries and enforce environmental regulations.

### **Participation and equity in land policies**

There is need for a robust monitoring and evaluation system on implementation of the land policy and achievement of its objectives to ensure that equity goals are regularly and systematically monitored. Due to the complexity and sensitivity of the land issues, there is need for the government through appropriate legal framework to institute regular public reporting on the implementation of land policy and reform agenda. Civil society organizations could also support government to facilitate local level and participatory monitoring systems for land related policies to ensure that the rights of the different vulnerable groups are monitored and protected as the land reform agenda is implemented as per provisions of the policy. This will also strengthen public input and participation in the implementation of the land reforms.

There is need for civil society organizations to carry out advocacy and sensitization on the land policy targeting government, donors, parliament and the community so that the policy implementation can receive adequate attention in MGDS prioritization and funding.

## **Thematic area 2: Land use planning, management and taxation**

### **Land use planning and exemptions from land use restrictions**

The study has shown that there is little or no evidence that public input is sought and utilized on a regular and systematic manner when making and amending land use plans in urban areas. To

improve transparency and public participation in land use planning and management, some policy options are suggested:

- Firstly, public input should be mandatory by law when making and amending land use plans as is the case with Environmental Impact Assessment process for development projects. Evidence of the process of soliciting public input and how that input has been used should be given and also made public.
- Secondly, there is need to fully implement the decentralization process so as to empower local authorities on these processes so that they can establish appropriate bye-laws to facilitate engagement of the public.

The study has also shown that land use planning in the rural areas has been on an ad-hoc basis. There are no rural land use plans in place for most of the country. Only physical plans exist for selected secondary growth centres and four districts. To improve the situation, two policy options are proposed:

- Firstly, a comprehensive National Land Use and Physical Development Management policy and plan has to be developed and implemented as a guide for rural and urban land use and development decisions across the country.
- Secondly, District and Town Councils are required to prepare Planning Schemes for all trading centers and settlements within their jurisdiction in consultation with traditional leaders. The schemes could contain simple land use development proposals and detailed land subdivision plans to guide orderly development of the settlements.

### **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. For the areas that are already declared ratable areas, the Local Councils should address the issue of under collection of property tax by ensuring compliance by all property owners irrespective of their standing in society and by maintaining up to date valuation rolls. The government and local authorities should develop mechanisms for making sure that gains and benefits are distributed to the public. The local councils may consider introducing such measures such as betterment taxes and infrastructure levies.

The local authorities should also fight land speculation through taxes and levies to induce faster development of property. Urban physical planning and development controls should also be enforced to discourage speculation. Guidelines for rural land use planning, conservation and environmental management will have to be developed by Local Authorities and Community Development agencies to guide rural land use and development decisions.

Although urban development is guided by the Urban Structure Plans (USP), there seems to be lack of capacity and commitment to keep plans up to date. There should be a regular programme for updating physical development plans and adequate resources be provided as appropriate. Capacity improvement is required for both Physical Planning Department and City Council to enable them effectively perform their mandates and prepare up to date USP.

There is need for elaborate urban planning with proper projections for urban growth – with targets and proper monitoring. This will assist to determine effective demand for land in urban areas to avoid speculation. Secondly, there is need for detailed urban housing profile to assess housing demand and services.

The information on procedures and channels to be followed to obtain a building permit are not widely disseminated to developers or those seeking building permits. The Town and Country Planning Guidelines and Standards and other documents to do with planning cannot be easily obtained e.g. purchased from local book stores. The local authorities need to develop up to date guidelines on how to obtain a building permit and these guidelines should be widely publicized and accessible. Thus, there is need to publicly disseminate steps and channels followed for applications for building permits so that the process can be understood and effectively pursued.

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 because 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 urbanization. As a result, the city councils have not been in control of new developments in urban areas.

In order to improve on current state of events several recommendations are proposed. The local authorities should ensure that valuations are done every five years and that supplementary valuations are done after every 12 months as per provisions of the law. This will be prerequisite in capturing the real value of land and improvements therein at each given point in time. There is need for analysis of taxation implications of the valuation of property to harmonize valuation and taxation issues. The local authorities should consider coming up with special rating areas to consider informal areas in urban areas which may be subjected to flat rates as may be determined. The Local Government Act needs to be reviewed and updated to keep with developments in urban areas. There is need for a separate law on valuation that will act as a guideline during valuations rather embedding it in the local government act.

The Local Government Act 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. It was however noted that a lot of people had no access to the valuation roll because it is centrally kept by the local authorities. The city authorities need to improve on methods of disseminating the valuation roll to property holders to include different media.

### **Thematic area 3: Public Land Management**

#### **Justification of public land ownership and management clarity**

The study has noted that Public land ownership is generally justified by the provision of public goods at the appropriate level of government but management may be discretionary because the land is managed by different government agencies including Ministry of Lands, other ministries, city councils and district council. In addition, there is no information on how much public land there is and how it is managed by the different entities.

The study thus recommends that all public land including government land should be properly surveyed and boundaries demarcated. Further, there will be need for public awareness to disseminate information on what is public land to local leaders and communities.

To make information on public land more accessible, the study recommends that the government should undertake wide dissemination of how land information is managed and can be accessed in order to enhance information sharing. Land information management should be decentralized to district and local levels to allow more people to access the information. In addition, different media should be used disseminate and share land information.

The study further notes that there are no clear responsibilities on management of public land between those using it e.g. school and hospital authorities and the land authorities such as Ministry of Lands or District Councils. The government should therefore clearly spell out responsibilities for management of public land. This could be included in the lease documents given to the government institutions using part of public land.

The study has also highlighted that there is limited/insufficient human capacity and financial resources to ensure responsible management of public lands. There are either significantly inadequate resources or marked inefficient organizational capacity leading to little or no management of public lands. This results in very few activities being done and failure to control abuse of public land. It is therefore, recommended that the ministries dealing with land and civil society organizations working on land should do more lobbying for elevating the profile of the land sector in national development priorities such as the Malawi Growth and Development Strategy. Secondly, government and civil society need to lobby for increased funding and capacity for land management from. Civil society working on land issues need to work in

collaboration with government to increase impact and effectiveness of programmes. Lastly, there is need for intensive capacity building in the land sector to ensure effective land management.

The study also noted that records and information on concessions and land allocations for public land is available with the Ministry of Lands but is 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. It is therefore critical that government ensure that all land transactions are made transparently and the information disseminated to the public and concerned stakeholders using appropriate media.

### **Justification and fairness of expropriation procedures**

The study has noted that where land is expropriated, it is done for public interest and for urban development as per plans and compensation, in kind or in cash, is paid so that the displaced households have comparable assets. In most cases, the affected people cannot maintain prior social and economic status due to delays in paying compensation by government due to budgetary constraints. All compensation is done by government through Office of President and Cabinet. In a number of cases, government fails to pay compensation and relies on developers to pay compensation. The delays in effecting compensation affect the attainment of prior social and economic status for those who have lost their land. According to the law, valuation report is valid for six months after that if compensation is not made the property needs to be reassessed. This provision is often ignored. Most do not receive compensation within 1 year. The process is implemented with some discretion. It is therefore, recommended that government should improve on timeliness of effecting compensation and minimize on relying on developers for compensation. There is also need for more funding in government budget for compensation coupled with decentralization of payment of compensation functions to district councils to assist in speeding up the process.

The study has noted that independent avenues to lodge a complaint against expropriation exist in Malawi at different levels through the court system or the office of the Ombudsman. However, there are some access restrictions because of the cost incurred to access these services such as transport and legal fees as such may only be accessible by mid-income and wealthy. It was also noted that most communities do not know their rights on compensation as such they may not know of any existence of such avenues or the need for accessing them.

The study recommends for the establishment of local land tribunals to deal with appeal structure at local level as is proposed in the draft new land bill. At the first instance, village level land disputes will be heard by a Village Land Tribunal (VLT) comprised of the Village Headperson and at least four elected members of the community including women. Appeals from the Village Tribunal should lie with the Group Village Tribunal (GVT) that should also serve as a tribunal of first instance for cases in which the village setting may not be appropriate. Traditional Authority

Land Tribunal (TALT) will hear appeals from the GVT. Appeals from the Traditional Authority level should lie to the District Tribunal of Traditional Authorities (DTTA) at the District Level. Any appeals from the District Tribunal of TA's should lie directly to the Central Land Settlement Board (CLSB). In addition, there is need to sensitize local communities on available avenues for appeal.

### **Justification and transparency of public land transfers**

The process for allocating land for all categories is not done by open tender or auction but by other ways such as internal allocation committees. In the absence of public auction or open tender processes, the public land is not leased at the market price. 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. To make the disposal of public land more transparent and equitable, the government should make public the information leading to the allocation of residential plots to individuals. The government and local authorities should publicize list of applicants including when applied and those who have been allocated land. For major developments such as hotels, manufacturing plants, shopping malls, office blocks (especially in prime areas , such as city centres) the government should consider adopting an open tender as an appropriate process for disposing of public land. The use of open tender process would help curb speculation and only those bids demonstrating adequate financial capacity to develop the plots would be successful. For residential plots, preference should be accorded to first time applicants as long as they demonstrate some capacity to develop the plots.

## **Thematic area 4: Public Provision of Land Information**

### **Reliability of land registries**

The study has shown that 'Between 70% and 90% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre. According to central land registry officials, the figures are close to 100% because according to them property can't be registered if not identified. Any registered property must have a map. The records in the registry can only be searched by parcel number. However, some registry map sheets are in poor state of repair and make it difficult for identification. In addition, all relevant encumbrances are recorded in the charge register and can be obtained at the registry upon payment of search fees of MK5000. The main challenge noted is that the land registry is not properly organized so that some encumbrances may not be recorded or people may obtain information without payment of search fees.

The study also highlights that most relevant public restrictions or charges are recorded consistently and in a reliable fashion and can be verified at a low cost by any interested party.

There are very few public restrictions that can be considered and these may include public roads and road reserves, reserved areas, historical sites and other protected areas. However, there are many valuable uses of land that are not protected. These include river line areas, forest areas, national parks, watershed areas and mountains. These are considered to be public land but nobody has title deeds over them as they are easily encroached or misused. These require their restrictions to be clearly recorded and publicly disseminated.

Between 50% and 70% of the ownership information in registry/cadastral is up-to-date. It was noted that there is a time lag for records to be updated once a transaction has been effected. In addition it was also noted that there are many other people outside government handling the transaction e.g. lawyers and valuers as such this takes more time. Copies or extracts of documents recording rights in property can only be obtained by intermediaries and those who can demonstrate an interest in the property upon payment of the necessary formal fee. Copies or extracts of documents recording rights in property can generally be obtained within 1 week of request considering that all extracts of documents from the registry have to be certified by the land registrar and this may take some time.

The Registered Land Act provides standards that guide the work of the registry officials, hence, can be used in monitoring their performance. The challenge may be that the law is not publicly disseminated for the public to understand the standards followed. The other challenge is the limited capacity of the registry both human and financial to deal with customer demands. It is therefore recommended that the government should enhance capacity of the registry both human, financial and equipment. There is also need to sensitize the general public on the available standards and their role to monitor performance of the registry.

There is an initiative by the Ministry of Lands, Housing and Urban development with support from the World Bank and other donors (under BESTAP Project) and with technical support from Land Equity International to modernize and computerize title and deeds registration systems and preserve the current manual land records through digitization. All manual records have been scanned and digitized and efforts are currently underway to put in place a modern and computerized system of land registries within 2011/2012 financial year.

### **Efficiency and transparency of land administration services**

The cost for registering property transfer is less than 1% of the property value. There is, however, a need for civic education to make the general public aware of most of the costs associated with land or real property transactions. The Ministry of Lands must play a major role of civic education.

According to the experts consulted, the registry is not financially viable and cannot sustain itself through the fees it collects. The government needs to work out a revenue generation system for



the Registry and monitor its operational costs for a period of say one year so as to compute workable fees which can initially sustain its operations. In the long run interventions which could lower operational costs should be adopted.

There are low levels of investment (capital, human, equipment) in the registry as in any other government department. For the system to be operating on a better level, there has to be massive modernization of the registries with equipment upgrade and increased budgets. Initiatives through the BESTAP project to support capital investments for the registry covering the national office and three regional offices are in progress. More than US\$1million is being invested in physical capital including computers, software and networking systems for the registry. The equipment is set to be installed in 2012. The project is also involved in capacity development of existing staff.

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 publicized through other media forums. People also do not appreciate the rationale for existing land transaction fees because there is no transparency and public involvement during their formulation.

According to the panel experts, mechanisms to detect and deal with illegal staff behavior are largely nonexistent. Members noted that senior staff in the Ministry of Lands are supposed to supervise and monitor the operations of the registry but there are no established mechanisms to detect and deal with illegal staff behavior. The Anti Corruption Bureau also investigates and takes action on all reported cases of illegal staff behavior relating to land. To improve the operations of the registry, the government should increase its investment in human capital for the registry to include diverse trained personnel such as lawyers. Secondly, registry systems need to be computerized, modernized and networked to check illegal practices and speed up registry processes. To improve staff capacity, study tours and attachments for staff of the registry would help through learning what other registries are doing in other countries.

## **Thematic area 5: Dispute Resolution and Conflict Management**

### **Accessibility of conflict resolution mechanisms**

The study has shown that 'Institutions for providing a first instance of conflict resolution are accessible at the local level but where these are not available informal institutions perform this function in a way that is locally recognized. There is clear system for dispute resolution from community level starting from village chief to Traditional Authority, then to district councils and thereafter to the courts (magistrate or high court). With traditional leaders, people are able to access primary justice. This is recognized in the Chiefs Act. However these operate as informal systems through the traditional leadership under the customary systems. In some cases the

decisions of traditional leaders on conflicts has been challenged in formal courts as lacking legal basis. In addition, the decisions of traditional leaders under customary law can be influenced or based on personal relationships. Experts therefore, recommend for reconciliation of customary law and written laws so that they can interrelate and be harmonized. The Malawi land policy proposes a dispute resolution process characterized by, in ascending hierarchical order, a Village Land Tribunal, a Group Village Tribunal, a Tribunal at Traditional Authorities level, a District Land Tribunal and the Central Land Settlement Board. There are other platforms or initiatives for accessing justice being promoted in a number of districts which include arbitration, mediation and primary justice forums.

The study also shows that there are parallel avenues for conflict resolution on land related matters. One can pursue traditional chiefs and the formal courts system 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 traditional/administrative system for reference but they are not mandated. There are also incidences where the court system have ignored traditional 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. The proposed establishment of the tribunals for land related disputes has to take cautious efforts to establish clear linkages and synergies with the formal court systems for sharing information and evidences and for appeal opportunities.

In Malawi a process exists to appeal rulings on land cases through higher level courts e.g. through the High Court and Supreme Court but costs are considered high and the process takes a long time. Considering the costs and delays in the formal court systems to resolve land matters, most experts support the recommendation on the establishment of local land tribunals to specifically deal with land disputes as proposed in the draft land bill to amend the current land law which is awaiting parliament approval.

### **Efficiency of conflict resolution**

The experts noted that land proceedings and disputes are on the rise (10-30%) and it is desirable that proper mechanisms suitable to the whole country are established and maintained. The experts consulted agreed that a decision in a land-related conflict is reached in the first instance court within 1 year for less than 50% of cases and long standing land cases comprise around 20% of the all land cases. Causes of delay in hearing and concluding land dispute cases included: cases brought before court using wrong procedures, frequent adjournments, too many witnesses paraded before court, missing of original court file or documents, delay by counsel for plaintiff

or defendant and retirement or death of honourable judge before the conclusion of case. The experts also noted that in most cases, land cases take long to deal with at all levels due to the search for credible evidence and having many interest holders.

To deal with increasing land related disputes, the following policy recommendations are advanced:

- Separate Land Tribunals specialized in land matters (like the Commercial Court) should be established to deal with all aspects of land Law i.e. Customary Law, Leasehold Law and Freehold Law and all other interests and rights associated with such holdings. The tribunals should be at all levels starting at community level up to district level as well as national level. When established such Tribunals should initially adopt informal methods of dispute resolution such as Mediation, or Arbitration, and appeals should be confined to one higher court only unless leave is granted by the court of decision for a further appeal (s).
- Alternatively, since Magistrates and local courts are found all over the country, jurisdiction should be given to these courts to deal with certain aspects of all forms of land disputes, such as boundary disputes or inheritance (where the value of the property is not phenomenal) and the protection of minors or estate property. The appeal process will follow that provided by the Courts Act.
- A study should be done to review and consolidate the procedures and enforcement methods currently available in all land disputes and if approved definite recommendations for the establishment of National Land Tribunal system. The judiciary will have to be involved in such a study or consultation.
- There is also need to improve on information management at the land registry to improve access to information and reduce alleged fraud at the registry. This improvement may involve computerization of the registry and adding photos to title deeds.

## 5.1 Methodological lessons and data gaps

One of the challenges in the methodology related to the expert investigations part. The methodology calls for four 4 experts to be recruited for the four areas. The experience from the study was that for some components such as the land tenure, one needed to combine land policy and legal expertise to deal with the section. In addition, the component on land use, one needed to have a mixture of land use planning/physical planning and property valuation expertise. This seemed more challenging and taxing for one expert. There is need to review the number of experts to accommodate more expertise by subdividing the areas into more than four components. The number and combination of the indicators to be reviewed by one expert also needs to be reexamined and appropriate reallocations made.

To enrich the process of assessment, it would add value for the individual experts to review all dimensions and then the panels should review the experts' initial assessment and debate those expert suggestions. This would also make sure that all dimensions are critically analysed at two levels.

Some dimensions also seem to be repetitive in the way they are presented. There may be need to combine some to reduce number of dimensions e.g. combining dimensions on individual and group rights.

The biggest challenge in the analysis was that data and information for most quantitative indicators was difficult to find either because it was not available or it was scattered in different agencies or it was not systematically stored. This made the assessment of some dimensions incomplete and shallow. There seems to be no systematic information management on land issue in Malawi and there has not been recent studies to update information on land since the drafting on the land policy in 2002.

## 5.2 Key findings and suggested reform actions

One of the staggering findings from this study has been that land sector is governed by an old legal framework that require updating to improve management of the sector and come to terms with development realities. The basic land laws applicable in Malawi are very old dating in the 60's when Malawi had just attained independence from the British colonial rule. These legislations carried over the colonial legal framework which may not be fully practical with the modern developments in Malawi. Land policy which was developed in 2002 has not fully

implemented due to lack of supporting legal framework as most of the propositions in the policy require that the basic land laws should be amended to be effected and legally enforced. The land policy and the land laws need to be reviewed and get harmonized with other sectoral laws relating to agriculture, water and natural resources management to reduce policy conflicts and overlapping mandates and responsibilities.

Overall, within the current legal framework, it is clear that not all land rights legally protected and enforced. For example the customary land rights although recognized are not legally enforced as they are governed by customary law which is uncoded and varies from area to area. The informal urban land holders are also not legally protected apart from some legislation making them illegal. The reality is that the majority of the urban dwellers thrive in these informal areas as such legal means and procedures aimed at protecting or formalising their rights are critically essential.

The study has also clearly demonstrated that there are no systematic systems of land use planning and management for rural land. As such there are no up to date land use plans available for most rural land. This is an area that requires urgent attentions considering that there are diverse land uses being practices in rural areas and there are also many and diverse interest holders. Rural land is in majority and most of it is under customary tenure as such much government attention should be on proper management of this land bringing together all interest holders.

The study has shown that for urban land there is some systematic land use planning and management but plans not regularly updated and lack public input. In addition, the plans are not enforced, monitored and controlled due to lack of procedures and capacity (financial and human).

It is also clear from the study that there is weak institutional and organizational capacity for land management both at central government and district level. In addition, there is fragmented responsibility for land administration between different government agencies within the land sector and outside the land sector. This brings both horizontal and vertical overlaps and conflicts in land management. The government needs to review the functional responsibilities of different agencies and clarify roles and responsibilities both at national level and district levels for different categories of land.

The study has also shown that there weak capacity (financial, human and equipment) at land registry establishments resulting in poor record keeping and information management. The

current efforts aimed at modernizing the land information system should be supported. In addition, there is need to strengthen district and local level land administration and information management so as improve the efficiency and effectiveness of the system.

The land sector requires systematic monitoring and evaluation framework and procedures so that developments in the land sector can be monitored as part of the national development system. This will require setting up system and enhanced capacity at national and district level to ensure that there is continuous and effective monitoring and reporting in the land sector. Efforts should be made to link the land sector monitoring with the MGDS monitoring and National statistical systems.

Overall, it has to be emphasized that land is at the center of development in Malawi. Unfortunately, the land sector has not been given center stage in the national development planning efforts (e.g. in MGDS) as such land policy and management has not been prioritized and not given adequate attention and resources in national planning processes and development implementation. This is the weakest link in the national development agenda as most priority economic sectors are land based. There is need for urgent rethink and redress of the situation to arrest the declining land sector so that it can contribute to national development achievements.

### **5.3 Scope for further work**

Areas requiring further work in land governance in Malawi include the following:

- There is need to engage the key government agencies e.g. planning ministry, finance ministry, environment ministry and lands ministry to adopt the LGAF objectives and indicators so that they can be systematically adopted and used
- There is need for an assessment on how to integrate the LGAF into national monitoring and reporting systems such as for the MGDS, environmental monitoring or through regular surveys of NSO such as integrated household survey (IHS)
- The LGAF needs to have set time frame to undertake e.g. every five years and could be related to major policy reviews in the country e.g. MGDS review and Integrated Household survey which are done after 5 year to assess how development indicators are progressing.
- The MGDS sector working group on land issues should take responsibility for taking the LGAF forward including publicising and domesticating for national utilisation

### **5.4 Comments by the Country Coordinator**

The outcome of LGAF will have to influence policy at large. One of strength of LGAF has been its space to involve the government, ministry of lands in particular. This involvement of government body establishes a platform for which policy recommendations from LGAF would

easily fit in the government's efforts in driving policy change. The Ministry of Lands needs to be supported to produce policy briefs by thematic area based on the LGAF analysis and undertake policy seminars and public debates with smaller groups of policy makers including members of parliament and private sector

The ministry needs to engage and collaborate with civil society players to disseminate the LGAF content, significance and results at national and local levels so that it can be understood and receive adequate programming and financial attention at national and district level.

# ANNEXES

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## Annex 1: LGAF and Definitions

The following is a set of definitions of technical and legal words that are commonly used in the field of land administration. These are written to be interpreted in the local context, while considering the need to remain consistent for global comparison.

<i>Acquisition</i>	Assumption or attainment of rights in property.
<i>Adjudication</i>	Process of final and authoritative determination of the existing rights and claims of people to land.
<i>Adverse possession</i>	Possession of land through long term peaceful occupation as a trespasser or squatter. The right to possession after a statutorily prescribed period of limitation can be gained if there is no legally defensible claim.
<i>Assessed tax</i>	Taxation based on an assessment of the value of the property.
<i>Building permit</i>	An approval by the local governing body on land use and planning for construction or renovation to a property.
<i>Building standards</i>	Regulations or bylaws that set out standards one must conform to when constructing or renovating buildings or immovable objects. Examples include building heights, setbacks from roads or neighbors etc. Where standards are not met the local authority can impose fines or instruct on construction changes.
<i>Cadastre</i>	A cadastre is normally a parcel based and up-to-date land information system containing a record of interests in land (i.e. rights, restrictions and responsibilities). (FIG 1995) <sup>32</sup>
<i>Classification</i>	Classification is a land use and management mechanism to assist decision making. Classification is based on the use of the land, not on the type of ownership or necessarily the rights associated with the land/property.
<i>Collective rights</i>	Collective ownership of a natural resource is where the holders of rights to a given natural resource are clearly defined as a collective group, and where they have the right to exclude third parties from the enjoyment of those rights.
<i>Common property</i>	Common property is typically land and other resources in which entitled beneficiaries, whether individual or community defined, have specific common rights to common areas. The community controls the use of the common property and can exclude non-members from using it.

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<sup>32</sup> FIG, 1995. *The FIG Statement on the Cadastre*, Federation of International Surveyors.



<i>Concession</i>	A concession is a restricted use right granted to a private party for a large parcel of public land that is granted for a specific purpose (for example forestry, bio-fuel, cultural/tourism etc).
<i>Communal land</i>	Land over which a community has rights or access to. The community may or may not have legally recognized ownership over the land. In some cases for instance the State may be considered the owner.
<i>Condominiums</i>	A condominium is a collection of individual home units along with the land upon which they sit, also known as strata. Individuals have private rights within the complex/building, but they also have use and access to common facilities, including hallways, stairwells, and exterior areas etc. There are typically common property areas included in the property that require management by the commons.
<i>Conveyance</i>	The conveyance of land is the actual process of transfer of that land.
<i>Customary tenure</i>	The holding of land in accordance with customary law. Customary land law regulates rights to enjoy some use of land that arises through customary, unwritten practice, rather than through written or codified law. Customs are a set of agreed, stipulated or generally accepted standards, social norms and practices.
<i>Decentralization</i>	Decentralization is the principle of delegating policy-making and authority responsibility to local levels of public authority.
<i>Deed</i>	Written or printed instrument that effects a legal action such as a contract for sale
<i>Disposition</i>	Arrangement for relinquishment, disposal, assignment or conveyance of rights in property.
<i>Dispute resolution</i>	There are typically a range of dispute resolution mechanisms available in a country. These could be grouped into two broad classes: formal dispute resolution mechanisms; and informal dispute resolution mechanisms. The formal dispute resolution mechanisms include the formal court system as well as a range of other options that may include administrative dispute resolution and state administered or sanctioned alternative dispute resolution (ADR) mechanisms. The informal systems typically involve community leaders, village elders, village assemblies or committees in resolving disputes. They may or may not have formal recognition by the state or under the law.
<i>Encroachment</i>	Occupation of land, typically unclassified or under-utilized State land.
<i>Encumbrance</i>	A right that adversely affects the land. Many are registerable in formal real estate registration systems; such as restrictive covenants, easements, mortgages and registered leases.
<i>Eviction</i>	Eviction is the removal of someone from their occupation of land or property. The term is very commonly used in connection with the eviction of squatters, but may also be used in the context of unlawful eviction.

<i>Exemption (tax)</i>	Release from the obligation to pay tax. Property tax exemption is typically based on criteria such as the particular use of the property (such as use as a place of primary residence, public use, agricultural production, etc), ownership (with exemptions for particular types of owners such as investors, government etc.), or other factors (such as the status of improvements on the land, location or size of the holding etc.).
<i>Expropriation</i>	Expropriation is the act of taking away individuals' land by the state due to public interest but prior to respect of procedures provided for by law and prior to payment of fair compensation.
<i>First instance (Basic tribunal)</i>	This is the first judicial instance (court) which serves as the place of a first hearing of a dispute in the judicial system. Decisions served in such courts can be appealed and raised to a higher level of the judicial court system.
<i>Forests</i>	There are typically many different forest classifications, designated for different uses, management authority levels and with various effective bi-laws. Management regulations typically outline user rights, production rights, extraction rights, hunting and gathering rights etc. Community forests and community land care groups use and manage designated areas by an identifiable community, but in many cases they must gain governmental approval of their management plan. In a more general sense, forest classifications can extend to a wide range of natural resource management areas including wetlands, grasslands, desserts, and cleared areas.
<i>Freehold</i>	Freehold, equivalent to the legal term fee simple absolute, is full ownership of land in English law providing the owner with the largest 'bundle of rights' of ownership.
<i>Governance</i>	We define governance as the traditions and institutions by which authority in a country is exercised. This includes (i) the process by which governments are selected, monitored and replaced; (ii) the capacity of the government to effectively formulate and implement sound policies; and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them (Kaufmann et al., 2002 <sup>33</sup> )
<i>Governance (land)</i>	Concerns the process by which decisions are made regarding access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled. Key elements of the definition include decision making, implementation and conflict resolution, with dual emphasis on process and outcomes. (GLTN, 2008 <sup>34</sup> )

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<sup>33</sup> Kaufmann, D., et al., 2002. *Assessing Governance: Diagnostic Tools and Applied Methods for Capacity Building and Action Learning*. Discussion Draft 1. Washington, D.C., World Bank Institute.

<sup>34</sup>2008, GLTN, *Common Definitions of the Global Land Tools Network*, UNHabitat, <http://www.glt.net/en/finding-common-definitions.html> [access date: 30 March 2009].

<i>Group</i>	A group is a collection of households residing in a locality and operating under some common organization or set of rules and norms, with or without formal recognition of the state. In rural areas these groups include indigenous, nomadic and pastoral communities. In the urban context these groups include organized informal settlements, collectively organized migrants who cluster in a particular locality and clusters of traditional communities.
<i>Informal settlements</i>	Occupation of an area by a group of individuals (households) that is not legally registered in the name of the occupiers. There is great variety in the form of informal settlements ranging from well established, well-built communities that simply lack formal recognition to very heterogeneous groupings of houses that are poorly planned and lack access to infrastructure such as roads, utilities etc.
<i>Indigenous</i>	The term ‘indigenous’ refers to communities that are native to the locality and frequently have specific cultural identities and practices, including practices related to land, that differ from the mainstream society and as a result are often marginalized and vulnerable. The status of “indigenous communities” may be defined by law.
<i>Land administration</i>	The processes of determining, recording and disseminating information about tenure, value and use of land when implementing land management policies (UNECE 1996 <sup>35</sup> ).
<i>Land dispute / conflict</i>	A land dispute is a disagreement over land. A land dispute occurs where specific individual or collective interests relating to land are in conflict. Land disputes can operate at any scale from the international to those between individual neighbors.
<i>Land management</i>	The activities associated with the management of land.
<i>Land tenure system</i>	<p>Land tenure refers to the legal regime in which rights in land are exclusively assigned to an individual or entity, who is said to "hold" the land.</p> <p>A land tenure system refers to the regulation for the allocation and security of rights in land, transactions of property, the management and adjudication of disputes regarding rights and property boundaries.</p>
<i>Land use plan</i>	A plan that identifies areas for a designated use for the purpose of land management. Used for classification, resource management planning, identification of areas for future development uses, including road widening.
<i>Lease</i>	A lease is a contractual agreement between a landlord and a tenant for the tenancy of land.
<i>Legal framework</i>	Judicial, statutory and administrative systems such as court decisions, laws, regulations, bylaws, directions and instructions that regulate society and set enforcement processes.

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<sup>35</sup> UNECE, 1996. *Land Administration Guidelines*, United Nations Economic Commission for Europe, Geneva.

<i>Mortgage</i>	A transfer in the interest of land for the security of a debt.
<i>Operating costs (of the registry)</i>	For the purposes of the LGAF, total operating costs include all non-capital investment costs (i.e. salaries and wages, materials, transportation, etc.) associated with registry operation. Registry operating costs do not include long-term capital investment or associated depreciation expense.
<i>Parcel (of land)</i>	A parcel is a defined area of land with a unique record of ownership, use, or other characteristics
<i>Public good</i>	An asset, facility, resource or infrastructure provided for the benefit of the public.
<i>Public information</i>	Public access to information is a feature of public policy by which each society defines what information, particularly about private citizens and corporate entities, should be available to the public.
<i>Public land</i>	Public land is the land in the custodianship of the State, municipality, or local authority, as opposed to private land.
<i>Publicly accessible</i>	Referring to information that can be obtained by the public without any special requirements or certifications placed on the person/body making the enquiry.
<i>Registry</i>	The term ‘registry’ or ‘register’ is used to denote the organization where the information on registered land rights is held. Information on registered land is typically textual and spatial, with the former typically maintained in a registry and the later in a cadastre office. In some countries there is a combined organization that has both sets of data and in some countries this office is called the cadastral office (in the Balkans, for example). In others there are separate registry and cadastre offices. For the purpose of the LGAF, unless clearly specified otherwise, we use the term ‘registry’ to cover both the registry and the cadastre (if one exists).
<i>Registered</i>	In applying the LGAF, the term ‘registered’ means that the rights are recorded unambiguously in the land administration system and there are generally few disputes over the recorded information. The term ‘registered’ does not necessarily mean that the final certificate or title has been issued.
<i>Regularization / formalization</i>	Regularization of tenure is where informal or illegal occupation of land is legalized by statute, giving occupiers the legal right to ownership, occupation or use of the land.
<i>Resolution - formal</i>	Resolving a dispute through an administrative or judicial process where the outcome is legally binding.
<i>Resolution - informal</i>	Resolving a dispute through a process where the outcome is not legally binding.
<i>Restrictions</i>	These are limitations on one’s rights.

<i>Secondary rights</i>	Rights that are beyond the primary rights to transfer property through sale, gift, exchange or inheritance or encumber property through mortgage, lien or other charge. Secondary rights are typically associated with use rights that may or may not be eligible for registration.
<i>Sporadic registration</i>	The process of registering rights over land on a case-by-case basis.
<i>Typology of tenure situations</i>	A country-specific typology of land tenure is established during the implementation of the LGAF. It distinguishes Public ownership/use, Private ownership/use and Indigenous and non-indigenous community tenure.
<i>Urban group rights</i>	Refers to identifiable groups in an urban setting. Those which people can be easily classified as members or non-members for the purpose of benefitting from specific rights to an area.
<i>Usufruct, use rights</i>	Usufruct is the legal right to use and derive profit or benefit from property that belongs to another person or entity.
<i>Valuation roll</i>	A list of taxable properties and associated property values used in assessing property tax within a jurisdiction (typically a local government authority).

## **Annex 2: Panel reports (Aide Memoires)**

### **Aide Memoire of the Expert Panel Workshop on Land Tenure**

**Venue: Reserve Bank Club, Lilongwe**

**Tuesday, 8 Nov, 2011**

#### **1. Introduction**

The Land Governance Assessment Framework (LGAF) is a diagnostic tool designed to identify areas where policy interventions may be needed to improve governance in the land sector. The LGAF divides land issue into five thematic areas; (i) Legal and Institutional Framework; (ii) Land Use Planning, Management and Taxation; (iii) Management of Public Lands; (iv) Public Provision of Land Information; and (v) Dispute Resolution and Conflict Management. In line with these thematic areas, 21 Land Governance Indicators (LGI) have been developed. Each of the LGIs was further broken down into a number of dimensions ranging from 2 to 6. Thus, the LGAF study is based on the assessment of 80 dimensions.

A core strategy for the implementation of the LGAF is the setting up of Expert Panels of 3-5 members to carry out both individual and consensus assessments of a number of given dimensions in a day's workshop. One of the eight Expert Panel Workshops is on Land Tenure. The panel has thirteen LGAF dimensions to assess. The Expert Panel Members who attended the workshop were: (i) Mrs. C. Kulemeka, Director of Planning, Lilongwe City Council; (ii) Mrs. E. Bota, Assistant Commissioner for Lands in the Ministry of Lands, Housing and Urban Development and (iii) Mrs. E. Maseya, Land Administration Expert/Valuer in private practice. These were supported by (iv) Mr. Francis Liuma, Land tenure Expert from University of Malawi.

The workshop was carried out in two sessions. The first session involved the CC making a presentation that introduced the LGAF Study and explained the objective of the Panel Workshop including a brief description of each of the 13 dimensions and the procedure to be followed in their assessment. This was followed by individual assessments of the dimensions by the panel members and scoring based on the available options. The rankings by the individual members were recorded on one scoring sheet (see Annex A). The second session was devoted to discussions and consensus building on each dimension as well as identifying policy recommendations or actions. At the start of discussing each dimension, the range of ranking made by each individual member and the reasons behind was revealed to all.

## **2.0 Assessment and Discussions of the Dimensions**

### **2.1 Land tenure rights recognition (rural) [LGI 1 (i)]**

This dimension encompassed the following options:

- A. Existing legal framework recognizes rights held by more than 90% of the rural population, either through customary or statutory tenure regimes.
- B. Existing legal framework recognizes rights held by 70% - 90% of the rural population, either through customary or statutory tenure regimes.
- C. Existing legal framework recognizes rights held by 50% -70% of the rural population, either through customary or statutory tenure regimes.
- D. Existing legal framework recognizes rights held by less than 50% of the rural population, either through customary or statutory tenure regimes.

Two panel members in their individual assessment of this dimension chose option D while one chose A and the other chose B. Those who chose D felt that the law does not provide security for customary tenure which is in majority in Malawi. They also felt that customary tenure holders have limited rights (user rights) and benefits as per current legal framework. For the member who opted for A, he felt that the law recognizes customary tenure but there is weak enforcement of rural land rights so that people are at the mercy of traditional chiefs and family/clan heads for their land rights. They also have little influence on valuation and compensation processes when there are situations of expropriation. Their land rights are also affected by poverty, corruption and illiteracy. There are no monitoring mechanisms on how customary tenure is administered. For the member who chose B, he also felt that the law recognizes customary tenure but the holders have limited rights over their land.

After discussions and clarifications on the provisions of the land law, Option B which states that 'Existing legal framework recognizes rights held by 70-90% of the rural population, either through customary or statutory tenure regimes' was therefore chosen as the consensus option. This is based on the fact that the current Land Act recognizes customary land which is in majority for rural land. But the challenge is that customary tenure is governed by customary law varies from area to area and there are no regulatory frameworks and guidelines for land administration.

The panelists made the following recommendations:

- There is need to pass the new land law so that customary land can be registered and guarantee security as well as to empower local communities to participate in land administration through local land boards and tribunals
- There is need for regulatory framework or guidelines for customary land.
- There is need for review of customary law especially on inheritance issues to improve security of tenure for marginalized groups such women
- There is need to widely disseminate land related policies and laws to allow people to understand provisions relating to their land rights

## **2.2 Land tenure rights recognition (urban) [LGI 1 (ii)]**

The panel members had the following options for this dimensions:

- A. Existing legal framework recognizes rights held by more than 90% of the urban population, either through customary or statutory tenure regimes.
- B. Existing legal framework recognizes rights held by 70% - 90% of the urban population, either through customary or statutory tenure regimes.
- C. Existing legal framework recognizes rights held by 50% -70% of the urban population, either through customary or statutory tenure regimes.
- D. Existing legal framework recognizes rights held by less than 50% of the urban population, either through customary or statutory tenure regimes.

In their individual assessment of this dimension, the panel members all chose different options ranging from B to D. Two panelists chose C because they felt that informal settlements exist in urban areas and there are no clear systems to deal with them. They noted that most of the land in urban areas is not surveyed and has no titles. They also noted that informal settlements are growing and increasing in number. They estimated that almost 67% of the urban population live in informal areas. Some of these informal settlements require formalization but the process is long and cumbersome. They also noted that there are often political influences which affect proper enforcement of regulations on formalization and eviction of informal settlements. One panelist chose B because he felt that there are still some customary rights enjoyed in urban areas. The one who chose D because he felt that the Town Planning Act does not recognize informal areas in zoned urban areas as such any informal area or customary areas in urban areas are illegal. The panelist also noted that most pieces of land in zoned urban areas have offers of leases meaning that each piece of land can have lease documents. In case of traditional housing areas, regularization also helps to provide tenure security for the holder.

Option C which states that existing ‘legal framework recognizes rights held by 50-70% of the urban population, either through customary or statutory tenure regimes’ was therefore chosen as the consensus option.

They all felt strongly of the need to deal with the problem of weak land administration systems in urban areas to ensure that regulations and legal provisions are implemented and adhered to. They also recommended an improvement in service delivery to reduce time it takes for leases to be granted.

## **2.3 Rural group rights recognition [LGI 1 (iii)]**

The options for this dimension were as follows:

- A. The tenure of most groups in rural areas is formally recognized and clear regulations exist regarding groups’ internal organization and legal representation.



- B. The tenure of most groups in rural areas is formally recognized but ways for them to gain legal representation or organize themselves are not regulated.
- C. The tenure of most groups in rural areas is not formally recognized but groups can gain legal representation under other laws (e.g. corporate law).
- D. The tenure of most groups in rural areas is not formally recognized.

The individual assessment of the panel members ranged from B to C with one panel member choosing B, and the remaining two choosing C. The fourth member did not score on this option. Upon deliberations, they all settled for C as the consensus option. They felt that group rights are recognized if people organize themselves into cooperatives and trusts which are registered as legal entities. The national land policy and the draft new land law has provisions for land management committees at village level.

#### **2.4 Urban group rights recognition in informal areas [LGI 1 (iv)]**

The range of options for the panel members under this dimension were as follows:

- A. Group tenure in informal urban areas is formally recognized and clear regulations exist regarding the internal organization and legal representation of groups.
- B. Group tenure in informal urban areas is formally recognized but ways for them to gain legal representation or organize themselves are not regulated.
- C. Group tenure in informal urban areas is not formally recognized but groups can gain legal representation under other laws.
- D. Group tenure in informal urban areas is not formally recognized.

Individual panel members scored between B and D with one panel member each choosing B and D and two choosing C. Option C which states that ‘group tenure in informal urban areas is not formally recognized but groups can gain legal representation under other laws was thus chosen as the consensus option.

The all agreed that 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 CCODE. These NGOs are mobilising urban poor communities in informal areas to secure low cost housing by organizing them into groups.

#### **2.5 Opportunities for tenure individualization [LGI 1 (v)]**

On this dimension, the panelist had the following options to choose from:

- A. When desirable, the law provides opportunities for those holding land under customary, group, or collective tenure to fully or partially individualize land ownership/use.

Procedures for doing so are affordable, clearly specified, safeguarded, and followed in practice.

- B. When desirable, the law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land ownership/use. Procedures to do so are affordable and include basic safeguards against abuse but are not always followed in practice and are often applied in a discretionary manner.
- C. When desirable, the law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land ownership/use. Procedures are not affordable or clear, leading to widespread discretion or failure to apply even for cases where those affected desire to so.
- D. Although desirable, the law provides no opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land ownership/use.

The individual assessments of this dimension showed that three panel members settled for option C while one panel member chose B. Option C which states that ‘the law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land ownership/use. Procedures are not affordable or clear, leading to widespread discretion or failure to apply even for cases where those affected desire to so’ was chosen as the consensus option.

The panelists indicated that the law provides opportunities for individualizing customary land into leasehold estate under Registered Land Act but the procedures are not affordable for the poor especially requirements for survey. The procedures for individualizing land ownership include:

- Adjudication
- Surveying
- Demarcation
- Registration

The new land law to be enacted provides for registration of customary land as customary estates. The panelists made the following recommendations:

- Surveying procedures should be reviewed and simplified to reduce costs, e.g. use of satellite imagery and handheld GPS.
- There is need for public intervention in large scale/mass demarcation/surveying to assist poor holders in the process of individualization.

## **2.6 Surveying/mapping and registration of rights to communal land [LGI 2 (i)]**

The options for this dimensions included the following:

- A. More than 70% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered.
- B. 40-70% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered.
- C. 10-40% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered.
- D. Less than 10% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered.

All panel members in their individual assessment opted for D. Option D states that ‘Less than 10% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered’ They noted that most boundaries are not surveyed and registered. Traditional authority areas and villages boundaries are only known by the owners using natural features such as rivers, trees, roads, rocks and hills. It is only estates under leasehold tenure where boundaries are clearly demarcated and registered in the rural areas. The panelists made the following recommendations:

- There is need to speed up enactment of the new land bill.
- There is need for local authorities to undertake demarcation and registration of boundaries for traditional authority areas and villages.
- The Chiefs Act should be reviewed to include clear definition of villages and ensure that new villages are formed with authority from local authorities.

## **2.7 Registration of individually held properties in rural areas [LGI 2 (ii)]**

This dimension had the following options:

- A. More than 90% of individual properties in rural areas are formally registered.
- B. Between 70% and 90% of individual properties in rural areas are formally registered.
- C. Between 50% and 70% of individual properties in rural areas are formally registered.
- D. Less than 50% of individual properties in rural areas are formally registered.

In their individual assessment of this dimension, all panel members chose D as their preferred option. They noted that majority of individual properties in rural areas are under customary tenure and are not formally registered. It is only estates under leasehold or freehold tenure that are formally registered because it was a requirement to get licence or sales quota for special crops such as tobacco. Due to high illiteracy, most rural communities are not aware of the provisions of the law and procedures with respect to registrations. The charges associated with the process of registration are many and unaffordable for the rural communities. The draft revised customary land law will promote individualization of rural land into customary estates. The panelist thus urged the authorities to speed up the process of passing the new land laws to

effect the reforms included such as formation of local land boards for adjudication, surveying and demarcation of customary land and registration of customary estates.

## **2.8 Registration of individually held properties in urban areas [LGI 2 (iii)]**

The range of options under this dimension was as follows:

- A. More than 90% of individual properties in urban areas are formally registered.
- B. Between 70% and 90% of individual properties in urban areas are formally registered.
- C. Between 50% and 70% of individual properties in urban areas are formally registered.
- D. Less than 50% of individual properties in urban areas are formally registered.

Three panelists individually opted for C while one chose D. In their discussions, they noted that there are many properties in informal settlements and in traditional housing areas which are not registered formally. One of the obstacles to formalization is that the process is slow and the costs can be prohibitive for the urban poor. Many people are interested in formal registration of their property because security of tenure promotes investments. However, quantitative data on this is difficult to get in Malawi.

Option C which states that ‘Between 50% and 70% of individual properties in urban areas are formally registered’ was chosen as the consensus option taking the situation of the country as a whole. They emphasized on the need for local authorities to ensure that provisions of the Town Planning Act are followed and adhered to reduce informality in urban areas.

## **2.9 A condominium regime provides for appropriate management of common property [LGI 2 (v)]**

This dimension comprised of the following options:

- A. Common property under condominiums is recognized and there are clear provisions in the law to establish arrangements for the management and maintenance of this common property.
- B. Common property under condominiums is recognized but the law does not have clear provisions to establish arrangements for the management and maintenance of this common property.
- C. Common property under condominiums has some recognition but there are no provisions in the law to establish arrangements for the management and maintenance of this common property.
- D. Common property under condominiums is not recognized.

Three panel members individually opted for C as they noted that some flats/apartments have been permitted to be constructed by local authorities which mean that common property under condominiums has some recognition. One panel member however opted for D as it was noted that the country does not have condominium law.

Option C which states that ‘Common property under condominiums has some recognition but there are no provisions in the law to establish arrangements for the management and maintenance of this common property’ was chosen as the consensus option. The panelists noted that a condominium law is very necessary in Malawi and recommended that the country should come up with a clear condominium law to guide management of common property considering increasing developments of apartments in the cities. The need was already expressed by the law commission which was reviewing the land law but the issue was not handled at that time.

## **2.10 Compensation due to land use changes [LGI 2 (vi)]**

The range of options for this dimension was as follows:

- A. Where people lose rights as a result of land use change outside the expropriation process, compensation in cash or in kind is paid such that these people have comparable assets and can continue to maintain prior social and economic status.
- B. Where people lose rights as a result of land use change outside the expropriation process, compensation in cash or in kind is paid such that these people have comparable assets but cannot continue to maintain prior social and economic status.
- C. Where people lose rights as a result of land use change outside the expropriation process, compensation in cash or in kind is paid such that these people do not have comparable assets and cannot continue to maintain prior social and economic status.
- D. Where people lose rights as a result of land use change outside the expropriation process, compensation is not paid.

In their individual assessments, two panelists chose C while one chose B and one panel member did not score. Option C was chosen because in most cases compensation is too small to allow comparable assets to be acquired and to maintain prior social and economic status. For customary land compensation is made on developments on the land and not on the land itself as such many get little compensation because there are few or no developments on the land. It was also noted that there are always delays in paying compensation which makes people not able to acquire comparable assets due to changes in market prices and some people refuse to move demanding more compensation and government ends up paying compensation twice or people ultimately refuse to move. The one who chose option B felt that now there is a national resettlement policy framework which will guide issues of compensation.

After discussions, Option C which states that ‘where people lose rights as a result of land use change outside the expropriation process, compensation in cash or in kind is paid such that these people do not have comparable assets and cannot continue to maintain prior social and economic status’ was chosen as the consensus option.

The completed matrix below also provides more explanation to the compensation situation in the country as per individual panel members.

<b>Process</b>	<b>Level of compensation</b>	<b>Compensated rights</b>	<b>Implementation</b>
Rural-urban conversion	2,2	2,2	2,3
Establish reserved land	3,3	2,2	3,2
Other (please specify:-----)			
<b>Codes:</b>	1 = Compensation paid in cash or in kind on the same or similar basis as compulsory acquisition; 2 = compensation paid in cash or in kind but at significantly lower level than compulsory acquisition; 3 = little or no compensation paid.	1 = All secondary rights recognized; 2 = Some secondary rights recognized; 3 = No secondary rights recognized.	1 = Consistently implemented; 2 = Implemented with some discretion; 3 = Implemented in highly discretionary manner.

The panelists made the following recommendations:

- There is need for authorities to speed up process of compensation payments and resettlements.
- There is need for local authorities to speedily implement projects and enforce changes in land use after compensation has been made.

## **2.11 Use of non-documentary forms of evidence for recognition of property claims [LGI 3 (i)]**

The panel members were considering the following options for this dimension:

- A. Non-documentary forms of evidence are used alone to obtain full recognition of claims to property when other forms of evidence are not available.
- B. Non-documentary forms of evidence are used to obtain recognition of a claim to property along with other documents (e.g. tax receipts or informal purchase notes) when other forms of evidence are not available. They have about the same strength as the provided documents.
- C. Non-documentary forms of evidence are used to obtain recognition of a claim to property along with other documents (e.g. tax receipts or informal purchase notes) when other

forms of evidence are not available. They have less strength than the provided documents.

- D. Non-documentary forms of evidence are almost never used to obtain recognition of claims to property.

In their individual assessments, all the panel members chose option B. The main reasons for this choice were that not all properties were registered in Malawi and currently there is no national identification system in place as non-documentary evidence is also permitted in certain claims. This might include witnesses such as chiefs and other relatives.

The panelists recommended that the authorities should speed up passing of the new land acquisition and compensation laws to ensure clear assessment of claims for compensation. The new land law provides for land acquisition, compensation and compensatable claims

## **2.12 Formal recognition of long-term, unchallenged possession [LGI 3 (ii)]**

The options for this dimension were as follows:

- A. Legislation exists to formally recognize long-term, unchallenged possession and this applies to both public and private land although different rules may apply.
- B. Legislation exists to formally recognize long-term, unchallenged possession but applies only to one specific type of land (e.g. either public land or private land).
- C. Legislation exists to formally recognize long-term, unchallenged possession but due to the way this legislation is implemented, formal recognition is granted to very few or no applicants for recognition on either public or private land.
- D. Legislation to formally recognize long-term, unchallenged possession does not exist.

In the individual assessment of this dimension, all four panel members chose option B. They noted that provisions of current land law only applies for private land and are not applicable on customary land where individuals have only usufructuary rights as the land belongs to families and is in the custodian of the chiefs. The Land Act provides for prescriptive rights to be given after 12 years of uninterrupted and unchallenged occupation. The recommended for the speedy enactment of the new Customary land law which will provide for customary estates as private land.

## **2.13 Efficient and transparent process to formalize possession [LGI 3 (vi)]**

The range of chosen options in the assessment of this dimension was as follows:

- A. There is a clear, practical process for the formal recognition of possession and this process is implemented effectively, consistently and transparently.
- B. There is a clear, practical process for the formal recognition of possession but this process is not implemented effectively, consistently or transparently.

- C. The process for the formal recognition of possession is not clear and is not implemented effectively, consistently or transparently.
- D. There is no process for formal recognition of possession.

The individual assessments by the panel members between B and C with three panel members choosing B, and one chose C. The choice of option B which states that “there is a clear, practical process for the formal recognition of possession but this process is not implemented effectively, consistently or transparently” was chosen by consensus. The panelist noted that capacity gaps in the government departments and local authorities affect efficiency and effectiveness of implementation. They also noted affordability may be a challenge for many people wanting formal recognitions. For example, on informal settlements on urban private land, the rules are there but not fully implemented. The panelists also noted that there are increasing cases of land disputes and informal settlements which calls for a need for formalization.

The table below shows the panelists assessment of the implementation of formalization processes on all informal settlements.

<b>Formalization</b>	<b>Formalization process</b>	<b>Implementation</b>	<b>Growth in informality</b>	<b>Comments</b>
<b>1.</b> Informal urban settlement on private land	2,2,2	2,1,3	3,2,2	
<b>2.</b> Informal urban occupation on public land	3,2,3	2,2,2	2,3,3	
<b>3.</b> Informal occupation of forest land or protected areas (national parks, wildlife reserves, etc.)	3,1,1	3,3,2	1,1,2	
<b>4.</b> Other (please specify:-----)				



<b>Codes:</b>	1 = Clearly defined rules that cover most cases; 2 = Clearly defined rules that cover about half the cases; 3 = Rules not clearly defined, and/or most cases not covered.	1 = Efficient & transparent; 2 = Some discretion in implementation; 3 = Significant discretion	1 = Very limited number of new informal settlers in the past year; 2 = Some new informal settlers in the past year; 3 = Many new informal settlers in the past year.	
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The panelists noted that formalization is done on project basis and not wholesale. The process starts with adjudication followed by surveying, demarcation and registration.

The panelist noted that with the new land laws when they are enacted, there will be need for large scale adjudication. There will also be need to status of forest areas so as to allow change in land use.

### Individual and Consensus Ranking by the Expert Panel Members on Land Tenure

LGI	Dimension Description	Ranking by Expert Panel Members				Consensus Ranking
		1	2	3	4	
1 i	Land tenure rights recognition (rural)	D	D	A	B	<b>B</b>
1 ii	Land tenure rights recognition (urban)	A	C	C	B	<b>C</b>
1 iii	Rural group rights recognition	C	C	B		<b>C</b>
1 iv	Urban group rights recognition in informal areas	C	D	C	B	<b>C</b>
1 v	Opportunities for tenure individualization	C	C	C	B	<b>C</b>
2 i	Surveying/mapping and registration of rights to communal land	D	D	D		<b>D</b>
2 ii	Registration of individually held properties in rural areas	D	D	D		<b>D</b>
2 iii	Registration of individually held properties in urban areas	D	C	C	C	<b>C</b>
2 v	A condominium regime provides for appropriate management of common property	C	C	C	D	<b>C</b>
2 vi	Compensation due to land use changes	C	C	B		<b>C</b>
3 i	Use of non-documentary forms of evidence for recognition of property claims	B	B	B	B	<b>B</b>
3 ii	Formal recognition of long-term, unchallenged possession	B	B	B	B	<b>B</b>
3 vi	Efficient and transparent process to formalize possession	B	B	B	C	<b>B</b>

## **Aide Memoire of the Expert Panel Workshop on Rural Land Use and Land Policy**

**Venue: RBM Club, Lilongwe, Wednesday, October 19, 2011**

### **1. Introduction**

The Land Governance Assessment Framework (LGAF) is a diagnostic tool designed to identify areas where policy interventions may be needed to improve governance in the land sector. The LGAF divides land issue into five thematic areas; (i) Legal and Institutional Framework; (ii) Land Use Planning, Management and Taxation; (iii) Management of Public Lands; (iv) Public Provision of Land Information; and (v) Dispute Resolution and Conflict Management. In line with these thematic areas, 21 Land Governance Indicators (LGI) have been developed. Each of the LGIs was further broken down into a number of dimensions ranging from 2 to 6. Thus, the LGAF study is based on the assessment of 80 dimensions.

A main step in the implementation of the LGAF is the setting up of Expert Panels of 3-5 members to carry out both individual and consensus assessments of a number of dimensions in a day's workshop. There are seven expert panels which have been established in Malawi. One of the seven Expert Panels organized is on Rural Land Use and Policy. Five Expert Panel Members were present for the workshop. They are: (i) Mr. Zwide Jere (Director, Total Land Care), (ii) Mr. Chrispin Magombo (CARE Malawi), (iii) Mr. James Banda, Deputy Director, Department of Land Resources Conservation, Ministry of Agriculture (iv) Mr. N.J. Mulenga (Retired Director of Land Resources Conservation Department), (v) Mr. F. Mukhupa, Economist, Ministry of Lands, Housing and Urban Development.

### **2.0 Assessment and Discussions of the Dimensions**

#### **2.1 Restrictions regarding rural land use, ownership and transferability are justified [LGI 4 (ii)]**

The options chosen by the panel member in their individual assessment of this dimension ranged between A and B

The panel members noted that a lot of restrictions on rural land use exist on land transaction, land ownership and ownership types. These restrictions which are mainly top-down, have however met various reactions when enforced. The panelists also noted that there are unwritten restrictions within customary land tenure (e.g. cutting down of trees in graveyards) which need to be taken advantage of. Restrictions especially those that do not take into consideration livelihoods needs of the rural community are generally challenged and difficult to enforce. A case is that of Thyolo where communities encroached Thyolo mountain forest area due to scarcity of land.

It was thus summarized that even though these restrictions are in existence, they are neither monitored nor enforced in most cases as represented in the table below.

<b>Restrictions on land ownership (for each one of the restrictions listed below, tick appropriate column and provide comment where relevant)</b>	<b>Non-existent</b>	<b>Exists, but not enforced</b>	<b>Exist &amp; Enforced</b>	<b>Brief description of restriction and comments</b>
<b>Restrictions on:</b>				
Land transactions		*	+	Title deeds in estate land
Land ownership		*	+	Land encroachment in some leasehold estates in Thyolo Encroachment on customary land Land grabbing from poor households by well to do individuals
Owner type		*	*	There is need to address needs of women and minority groups
Use		*	*	Unwritten regulations exist in rural land Need to learn from the rules and regulations that govern graveyards and other sacred places, river banks, communal grazing area, steep slopes.
Size of holding	*			
Price	*			Prices per ha not known by most people. Land sold based on individual negotiation
Rent	*	*		Wetlands (dambos) are sold or rented in rural areas although this is supposed to be public land

Option B which states that ‘there are a series of regulations that are for the most part justified on the basis of overall public interest but that are not enforced’ was agreed upon.

- There are a series of regulations e.g. in changes in ownership from customary to leasehold
- Many unwritten restrictions exist on rural customary land

## 2.2 Separation of policy formulation, implementation and arbitration [LGI 5 (i)]

Different options were chosen by the individual assessment of this dimension. The range of chosen options was between B and D with one of the panel members choosing B, two choosing C, while the remaining one chose D.

The choice of Option D which states that, ‘there is some separation in the roles of policy formulation, implementation of policy through land management and administration and the arbitration of any disputes that may arise as a result of implementation of policy but there are overlapping and conflicting responsibilities that lead to frequent problems’ was also opposed because the panel members noted that some separation of roles exist.

Option B which states that ‘there is some separation in the roles of policy formulation, implementation of policy through land management and administration and the arbitration of any disputes that may arise as a result of implementation of policy, but there are overlapping and conflicting responsibilities that lead to occasional problems’ was rejected by the panel members because three issues could not be combined for Malawi situation.

The choice of C which states that, ‘there is some separation in the roles of policy formulation, implementation of policy through land management and administration and the arbitration of any disputes that may arise as a result of implementation of policy but there are overlapping and conflicting responsibilities that lead to frequent problems’ was agreed upon.

The choice of this option was supported with reference to conflicts between Forestry and Water departments over management of forests which are also water catchment areas; Wildlife and Forestry over management and regulation of game reserves and national parks, Mining and Forestry, Forestry and Agriculture etc. where responsibilities of such land management institutions overlap. It was also observed that the frequent reshuffling and restructuring of responsibilities of Ministries bring in a lot of conflicts.

<b>Institutions (central and decentralised authorities)</b>	<b>Type of land/resource</b>	<b>Responsibility/mandate</b>	<b>Separation of policies and functions</b>	<b>Overlap occurs with other institution?</b>
Ministry of Lands, Housing and Urban Development	All categories of land	Policy formulation, land administration and regulating land use and arbitration	There are some mix-ups between departments where some officers carry out services which are not within their mandate.	Between Ministry of Local government through District Councils and Ministry of Lands especially on customary land.
Department of Lands,	All land	Land	Policy	Forestry and water

Ministry of Agriculture  Forestry Department,  Water Department	Agric land  Forests  Water catchment s	administration  Land use plans and land conservation  Forest management  Water management and catchment conservation	implementation overlaps; small scale irrigation activities along the river banks and yet other policies advocate for 10m buffer zone along the streams and rivers	departments  Forestry and Wildlife departments
Local Government • District Council • Traditional Authority	Customar y and private land	Land Administration, regulating land use, taxation and arbitration.		Overlaps between District councils and Traditional Authorities especially in the cases where traditional boundaries are recognized in both entities.

### 2.3 Avoidance of institutional (horizontal) overlap [LGI 5 (ii)]

The summary of the individual assessment of this dimension by the panel members revealed that the range of rankings was between B and C with three of the panel members choosing C while the other two members chose B.

Option C which states that the mandated responsibilities of the various authorities dealing with land administration issues are defined but institutional overlap with those of other land sector agencies and inconsistency is a problem, was chosen as the consensus option. This position was supported with various illustration where laid down policies overlap or do not take into consideration other policies e.g. Land Use and Management Policy, Land Policy, Mining Policy, Forestry Policy and National Parks Policy.

### 2.4 Avoidance of administrative (vertical) overlap [LGI 5 (iii)]

In the individual assessment of this dimension, the range of ranking chosen by the panel members was between C and B.

Decentralisation policy has spelt out clear responsibilities from central government to local authorities down to community levels. However there are some institutional overlaps in any

cases with some institutional levels are not trusted by the community e.g. chiefs. People have expressed that they are suppressed by chiefs hence prefer tribunals.

Both options which state that “division of land-related responsibilities between the different levels of administration and government is clear with minor overlaps” and “division of land-related responsibilities between the different levels of administration and government is characterized by large overlaps” apply in the Malawi case.

## **2.5 Land information is shared with interested institutions [LGI 5 (iv)]**

Option B which states that information related to rights in land is available to interested institutions and although this information is available at reasonable cost, it is not readily accessible as the information is not maintained in a uniform way was chosen with the qualification that the cost is not reasonable since the information is not maintained in a uniform way and is not regularly updated. There is need for a Central point of access.

## **2.6 Land policy is developed in a participatory manner [LGI 6 (i)]**

The range of chosen options under this dimension was between B and A with three of the panel members choosing B, one choosing A. Option B which states that ‘A comprehensive policy exists or can be inferred by the existing legislation. Land policy decisions that affect sections of the community are based on consultation with those affected but feedback is usually not sought or not used in making land policy decisions’ was chosen as the consensus option. This choice was supported with the knowledge of comprehensive consultation that took place for the Land Policy but panelists were not very sure how much the Policy incorporated comments nor have evidence that the community was informed of any changes thereafter. A case in mind is the land administrative powers of the chief.

## **2.7 Meaningful incorporation and monitoring of equity goals [LGI 6 (ii)]**

The options chosen by the panel members in their individual assessment of this dimension ranged between B and C with three of the panel members choosing C, while the remaining one chose B.

<b>Rights of</b>	<b>Considered in Policy</b>	<b>Meaningfully Monitored</b>	<b>Impact compared to other policy instruments</b>
Indigenous	1	2	NA
Migrants	3	3	NA
Landless	2	3	NA
Women	2	3	NA

Option C which states ‘that Land policies incorporate some equity objectives but these are not regularly and meaningfully monitored’ was thus chosen by consensus.

## **2.8 Policy implementation is costed, matched with benefits and adequately resourced [LGI 6 (iii)]**

Panelists chose option C which states ‘the implementation of land policy is not fully costed and/or to implement the policy there are serious inadequacies in at least one area of budget, resources or institutional capacity’ on the basis that implementation of the Land Policy has not been prioritised. There was need to carry out sensitization so that the community understands and buys into the policy

## **2.9 Regular and public reports indicating progress in policy implementation [LGI 6 (iv)]**

It was noted that there is hardly any report or reporting process for rural land policy implementation to **the public**.

Option D which states ‘that land institutions report on policy implementation only in exceptional circumstances or not at all’ was chosen as the consensus option based on the professional experience of the panel members.

## **2.10 In rural areas, land use plans and changes in these plans are based on public input [LGI 7 (ii)]**

Option D which states ‘public input is not sought in preparing and amending land use plans’ was chosen as the consensus option based on the professional experience of the panel members.

There are no rural land use plans in place, only physical plans exist for selected secondary growth centres.

## **2.11 Use plans for specific rural land classes (forests, pastures, etc) are in line with use [LGI 8 (v)]**

Option C which states that ‘the share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is between 30 and 50%’ was chosen by all the panel members in their individual assessment of this dimension.

Because of land pressure, most rural land classes (forests, pastures, wetlands) are being converted to commercial, residential or agricultural use.

Panel members noted that there is need for the development of rural land use plans. The Land Resource Evaluation Project 1992 Reports could be used as a basis for developing land use plans at national level. Specialists at District level would then come up with district level land use plans which should take into consideration public opinion.



## **2. General Comments and Policy Reforms**

- Land Policy implementation has stagnated somewhere. Supporting instruments to the implementation of Land Policy must be speeded up e.g. through enactment of the revised Land Laws.
- The Land Policy was adopted in 2002 and it is 9 years down the line. There is need for an evaluation/review on its impact which will lead to revision of the policy.
- There is need for public awareness campaigns on the provisions of the Land Policy and land laws. A website existed where some pages gave information on LP but was discontinued. There is need to re-establish this in order to give feedback to stakeholders of the Policy.

### Individual and Consensus Ranking by the Expert Panel Members on Rural Land Use and Land Policy

LGI	Dimension Description	Ranking by Expert Panel Members					Consensus Ranking
		1	2	3	4	5	
4 Ii	Restrictions regarding urban land use, ownership and transferability are justified	A	B	B	B	B	<b>B</b>
5 I	Separation of policy formulation, implementation and arbitration	D	B	C	C	C	<b>C</b>
5 Ii	Avoidance of institutional (horizontal) overlap	C	B	C	C	C	<b>C</b>
5 Iii	Avoidance of Administrative (vertical) overlap	C	B	B	B	C	
5 Iv	Land information is shared with interested institutions		D	C	C	B	<b>B</b>
6 I	Clear land policy is developed in a participatory manner	A	B	B	B	C	<b>B</b>
6 Ii	Meaningful incorporation and monitoring of equity goals	B	C	C	C	C	<b>C</b>
6 Iii	Policy for implementation is costed, matched with benefits and adequately resourced	C	D	C	C	D	<b>C</b>
6 Iv	Regular and public reports indicating progress in policy implementation	D	D	D	D	D	<b>D</b>
7 Ii	In rural areas, land use plans and changes in these plans are based on public input	D	C	D	D	D	<b>D</b>
8 V	Use plans for specific rural land classes (forests, pastures, etc) are in line with use	D	B	C	C	D	<b>C</b>

## **Draft Aide Memoire of the Expert Panel Workshop on Urban Land Use Planning and Development**

**Venue: Reserve Bank Club, Lilongwe**

**Wednesday, October 20, 2011**

### **1. Introduction**

The Land Governance Assessment Framework (LGAF) is a diagnostic tool designed to identify areas where policy interventions may be needed to improve governance in the land sector. The LGAF divides land issue into five thematic areas; (i) Legal and Institutional Framework; (ii) Land Use Planning, Management and Taxation; (iii) Management of Public Lands; (iv) Public Provision of Land Information; and (v) Dispute Resolution and Conflict Management. In line with these thematic areas, 21 Land Governance Indicators (LGI) have been developed. Each of the LGIs was further broken down into a number of dimensions ranging from 2 to 6. Thus, the LGAF study is based on the assessment of 80 dimensions.

A main step in the implementation of the LGAF is the setting up of Expert Panels of 3-5 members to carry out both individual and consensus assessments of a number of dimensions in a day's workshop. There are seven expert panels which have been established in Malawi. One of the seven Expert Panels organized is on Urban Land Use Planning and Development. The Panel Members present for this session were: (i) Mr. Kelby Chirwa, Department of Housing, Ministry of Lands, Housing and Urban development; ii) Mr. John Chome from UN HABITAT and iii) Mr. Elvis Njoka from Physical Planning department. This report gives a summary of the deliberations of the panel members for this session including their individual and consensus assessments of the given LGAF dimensions.

### **2.0 Assessment and Discussions of the Dimensions**

#### **2.1 Formalization of urban residential housing is feasible and affordable [LGI 3 (v)]**

The range of options chosen under this dimension was between C and D with two of the panel members choosing D, while the remaining one chose C. Option D states that 'the requirements for formalising housing in urban areas are such that formalising is deemed difficult' while option C states that 'the requirements for formalizing housing in urban areas are not clear, straightforward, or affordable but many applicants from informal areas are managing to satisfy the requirements'

For individual houses in a formal area zoned as a housing area, the process for formalizing is clear and application must meet certain minimum standards and the town planning committee can consider approving. For settlements where all houses are informal, there are no procedures for formalizing and because of almost non-existent enforcement, most informal house owners don't bother to formalize.

The following observations were made by the panelists:

- Most urban areas are informal areas with informal housing and yet this is where majority of the urban population resides.
- The requirement for formalising informal housing are not clear
- There is lack of procedures for formalizing informal settlements– there is need for mechanism for formalising informal settlements.
- Most people in urban settlements are not aware of how to formalize their informal settlements
- Some people may not see the need to formalize while some consider the process to formalize difficult.
- The land policy of 2002 mentions of the need to formalize informal settlements
- A new housing policy is being finalized will tackle some of these issues

The panelist resolved that the situation in Malawi for this dimension contains elements of both Can D.

In order to improve the situation the panelists make the following recommendations:

- There is a need for mechanism, procedures and rules to guide the formalization process both in large cities and small towns
- The public must be sensitized on the mechanism and procedures for formalization
- There should be some incentives devised to encourage formalization in informal settlements.

## **2.2 Restrictions regarding urban land use, ownership and transferability are justified [LGI 4 (i)]**

In their individual assessment of this dimension, all three panel members chose option B and this was the consensus option. Option B states that ‘there are a series of regulations that are for the most part justified on the basis of overall public interest but that are not enforced’. The table below shows the status of the various restrictions.

Restrictions on land ownership	Non-existent	Exists, but not enforced	Exist & enforced	Brief description of restriction and comments
Restrictions on:				
Land transactions		*		In Traditional Housing Areas (THA), there are restrictions on plot transfers and there are also restrictions on government (lease) plots which are undeveloped
Land ownership		*		Restrictions on one person one plot in THA but people bribe officials to get more than one plot
Owner type		*		Restrictions on foreigners owning land

Use		*		Restrictions on type of building in certain zones – this promotes corruption
Size of holding		*		Restriction on the size of land in different zones e.g. THA – this promotes crafty practices where people combine plots to get a bigger size
Price	*			For real property in private ownership the price is determined on an open market.
Rent	*			Determined by supply and demand for real property in private ownership. Malawi Housing Corporation rents are usually below the market rate.

### Policy Commentary

The panelist made the following comments:

- In most cases there is weak enforcement of restriction and regulations.
- There is need to fully implement the decentralization policy to empower local authorities to enforce restrictions and regulations
- There is need for civic education for urban dwellers on procedures and restrictions
- There is need for authorities to work on eliminating artificial land shortages in urban areas by making more land available and accessible for more people. This will help reduce corruption.

### 2.3 In urban areas, land use plans and changes in these plans are based on public input [LGI 7 (i)]

The range of options chosen by the panel members in their individual assessment of this dimension was between B and D. One panelist chose C because there is no documented evidence that public inputs or comments are included in land use plans and changes. The other panelist chose B where he thought that the process of getting public input is unclear and unsystematic. the third panelist chose D because he felt that land use changes are made without public input.

Following further debate, Option D which states that ‘*public input is not sought in preparing and amending land use plans*’ was therefore chosen as the consensus option

### Policy Recommendation

- Public input should be mandatory by law when making and amending land use plans as is the case with Environmental Impact Assessment process for development projects

- There is need to fully implement the decentralization process so as to empower local authorities on these processes
- There is need to remove political interference and influences in making land use changes

#### **2.4 Public capture of benefits arising from changes in permitted land use [LGI 7 (iii)]**

All the three panel members chose option D in their individual assessment of this dimension. Option D states that ‘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 used or not applied transparently’. They felt 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 can be not be guaranteed.

#### **Policy Recommendation**

- There is need for the government and local authorities to develop mechanisms for making sure that gains and benefits are distributed to the public.
- There is need to introduce such measures such as betterment taxes and infrastructure levies

#### **2.5 Speed of land use change [LGI 7 (iv)]**

The panelist felt that the option for this dimension was either A or D. Option A states that ‘more than 70% of the land that has had a change in land use assignment in the past 3 years has changed to its destined use’; while option D states that ‘less than 30% of the land that has had a change in land use assignment in the past 3 years has changed to its destined use.’ This depends on the scale of the land use change. For small scale plot based changes (e.g. change from house to office block), the changes can be made swiftly while for large scale changes e.g. through a revision of the whole city council plans, land use changes take many years (more than 3 years) to take effect. The only exception is when the changes are politically motivated as such changes are effected swiftly.

#### **Policy Recommendation**

There is need to fight land speculation through taxes and levies to induce faster development of property.

#### **2.6 Process for planned urban development in the largest city in the country [LGI 8 (i)]**

The panel members in their individual assessment of this dimension chose option ranging between C and D with two of the panel members choosing C, while the remaining chose D.

In Lilongwe, the largest city in the country, the city wide structure plan is in place but there are hardly any local detailed plans to guide development. Even with a city wide plan in place, implementation, compliance and enforcement are a challenge. There is poor implementation and

enforcement of plans. Urban growth has not been at pace with development plans – it has outpaced development plans. In addition in most cases, infrastructure is not provided when implementing development plans. The consensus of the 3 panelist was on option C which states that ‘in the largest city in the country, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization’.

## **2.7 Process for planned urban development in the four largest cities in the country, excluding the largest city [LGI 8 (ii)]**

The range of options chosen by the panel members in their individual assessment of dimension was between C and D with two of the panel members choosing c, while the remaining one chose D.

The three largest cities in the country excluding the largest city include:

- Blantyre
- Mzuzu
- Zomba

The panelists noted that while urban structure plans exist for these cities, there is poor implementation and enforcement of plans and urban growth was not at pace with plans with most infrastructure not provided in newly developed areas. Such needed infrastructure is provided later after urban development has taken place.

After debate, option C was therefore chosen as the consensus option. Option C states that ‘in the four major cities in the country, while a hierarchy of regional/detailed land use plans may or may not be specified by law, in practice urban development occurs in an ad hoc manner with little if any infrastructure provided some time after urbanisation’

## **Policy recommendations (for dimension i and ii)**

- There is need to ensure that urban structure plans are prepared regularly (every 5 yrs), implemented, enforced and updated.
- There is need for investment in infrastructure to stimulate urban development.
- There is need for marketing initiatives for zoned areas to attract more investors for infrastructure and urban development.
- There is need for strategic plans for specific development needs in the city.

## **2.8 Ability of urban planning to cope with urban growth [LGI 8 (iii)]**

In their individual assessments, all three of the panel members chose option C for this dimension. Option C which states that ‘in the largest city in the country, the urban planning

process/authority is struggling to cope with the increasing demand for serviced units/land as evidenced by the fact that most new dwellings are informal’

In the largest city urban development is guided by urban structure plans. In addition, there has been urban sector shelter profile done for Malawi which will also provide guidance.

### **Policy Commentary**

- There is need for elaborate urban planning with proper projections for urban growth – with targets and proper monitoring
- There is need for detailed urban housing profile to assess housing demand and services.
- There is need to determine effective demand for land in urban areas to avoid speculation
- There is need for regular development plans to be developed and updated.

### **2.9 Residential plot size adherence in urban areas [LGI 8 (iv)]**

The panelists noted that the application of this dimension is tricky for Malawi. In the formal sector (zoned areas), plots are created by the local authorities and standards on plot sizes are followed based on the zone. However in informal areas, plots are created by local landlords and are of varying sizes with no standards followed. It is only in formal areas where the local authority can enforce compliance on plot sizes because plot sizes are predetermined but in informal areas plots are of varying sizes and boundaries are most often contentious. No studies have been done so far in informal areas to assess plot sizes. The panel members thus felt that the situation in Malawi is towards option D whereby ‘existing requirements for residential plots are met in less than 50% of the plots.

### **2.10 Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner [LGI 9 (i)]**

The range of chosen options under this dimension was between B and C with two of the panel members choosing B and one opting for C.

The panel members listed the following as steps for applying for building permits:

<b>Steps</b>	<b>Agency</b>	<b>Technical Justification for the key steps</b>	<b>Estimated time (days)</b>	<b>Justification</b>	<b>Efficiency &amp; Transparency of the process.</b>
Prepare building plans and submit to the local authority	Developer	To ensure orderliness in development following standards	15 days		Not very Efficient and transparent
Site visit and consultations with service providers such as water	Local authority e.g. city council				



boards, electricity body and roads authority					
Submission of plans to the technical committee for approval	Local Planning Authority	Necessary for checking minimum building standards prescribed	Not stipulated	Clearly justified	
Upon approval the planning department submits a report for consideration by the town planning committee	Local authority planning committee				
Payment of scrutiny fees to the local authority	Developer	To cover costs of inspection and meeting of the town planning committee	Not stipulated	Clearly justified	
Upon consideration by town planning committee, a decision notice is given in writing to the developer	Local authority	To promote recording of transactions of the building permit	Not stipulated	Clearly justified	

The process of obtaining a building permits is fairly long (1-3months or more) as there are many steps to be followed. These steps could be technically justified but could be streamlined and the time could be reduced. The panelists noted the following challenges affecting the process: The cost of fulfilling the requirements needed for the granting of approval for building plans is considered by the panelists as high estimated at about 1% of the development costs and this varies from city to city.

After debate, option C which states that ‘requirements to obtain a building permit are technically justified but not affordable for the majority of those affected’ was considered to be closer to the real situation. However some elements of B are present in that the information on procedures and channels to be followed to obtain a building permit are not widely disseminated to developers or those seeking building permits.

## Policy Commentary

- There is need to publicly disseminate steps and channels followed for applications for building permits so that the process can be understood and effectively pursued.

### **2.11 Time required to obtain a building permit for a residential dwelling [LGI 9 (ii)]**

The panel members were not able to choose any option on this dimension due to inadequate information. The panelists noted that the Town Planning Act stipulates that applications should be approved within 60 days but most of the times, process of obtaining a building permits is fairly long (3 months or more) as there are many steps to be followed. They noted the following challenges affecting timely processing of building permits:

- Poorly staffed and equipped local planning offices e.g. Blantyre city council has one development officer
- Corruption – the process is prone to corruption
- Lack of enforceable checks and balances
- Lack of robust decision making bodies e.g. the town planning committee

### **Policy Recommendations**

- There is need for guidelines on how to obtain a building permit and these guidelines should be widely publicized and accessible.
- The composition of planning committees or decision making bodies need to be robust and not politically influenced
- There is need to build capacity of local authorities in terms of human and financial capacity
- There is need to put check and balances in the system to make sure that the planning authorities are transparent and accountable.

**Individual and Consensus Ranking by the Expert Panel Members on Urban Land Use Planning and Development**

LGI	Dimension Description	Ranking by Expert Panel Members			Consensus Ranking
		1	2	3	
3 v	Formalization of urban residential housing is feasible and affordable	D	D	C	<b>D</b>
4 i	Restrictions regarding urban land use, ownership and transferability are justified	B	B	B	<b>B</b>
7 i	In urban areas, land use plans and changes in these plans are based on public input	C	B	D	<b>D</b>
7 iii	Public capture of benefits arising from changes in permitted land use	D	D	D	<b>D</b>
7 iv	Speed of land use change	A	D		
8 i	Process for planned urban development in the largest city in the country	A	C	D	<b>C</b>
8 ii	Process for planned urban development in the four largest cities in the country, excluding the largest city	C	D	D	<b>C</b>
8 iii	Ability of urban planning to cope with urban growth	C	C	C	<b>C</b>
8 iv	Residential plot size adherence in urban areas	D		D	<b>D</b>
9 i	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner	B	B	C	<b>C</b>
9 ii	Time required to obtain a building permit for a residential dwelling				

**Aide Memoire of the Expert Panel Workshop on Land Valuation and Taxation**  
**Venue: Reserve Bank Club, Lilongwe**  
**Friday, October 21, 2011**

## **1.0 Introduction**

The Land Governance Assessment Framework (LGAF) is a diagnostic tool designed to identify areas where policy interventions may be needed to improve governance in the land sector. The LGAF groups land issues into five thematic areas; (i) Legal and Institutional Framework; (ii) Land Use Planning, Management and Taxation; (iii) Management of Public Lands; (iv) Public Provision of Land Information; and (v) Dispute Resolution and Conflict Management. In line with these thematic areas, 21 Land Governance Indicators (LGI) have been developed. Each of the LGIs was further broken down into a number of dimensions ranging from 2 to 6 culminating into 80 dimensions.

One of the main strategy for the implementation of the LGAF is the setting up of Expert Panels of 3-5 members to carry out both individual and consensus assessments of a number of given dimensions in a day's workshop. The expert panel on **Land Valuation and Taxation** is one of the 8 Panels organized to assess 6 LGAF dimensions. The Expert Panel Members who attended the meeting were: (i) Mr. G.L. Nthachi, Acting Director of Housing, Ministry of Lands, Housing and Urban Development; and (ii) Mr. T.G. Msonda, Private Valuer, TG Msonda and Associates. The panel session was also attended by (iii) Mr. Max Wengawenga, Principal Economist, Ministry of Lands, Housing and Urban Development and (iv) Mr. Francis Mukhupa, Economist in the Ministry of Lands, Housing and Urban Development.

The workshop started with the Country Coordinator making a presentation introducing the LGAF study to the panel and explaining the objective of the Panel Workshop. This was followed by a brief description of each of the 6 dimensions and the procedure to be followed in their assessment. The second part of the meeting was to allow the panel members to individually assess the dimensions and fill the scoring sheets as per instructions earlier sent to them. The rankings by the individual panel members were recorded on a composite scoring sheet (see Annex A). This was followed by collective discussion and consensus assessment of each dimension by the panel members as well as identifying possible policy recommendations. Some dimensions were not scored by the panel because of absence of members from the tax authority – Malawi Revenue Authority (MRA). A follow-up interview was arranged with MRA to fill the gaps on those indicators. The MRA officials who contributed to the assessment were Mr. E. Hapala and Mr. Crosby Phiri.

## **2.0 Assessment and Discussions of the Dimensions**

### **2.1 Clear process of property valuation [LGI 10 (i)]**

This dimension had the following options to be considered:

- A. The assessment of land/property values for tax purposes is based on market prices with minimal differences between recorded values and market prices across different uses and types of users and valuation rolls are regularly updated (at least every 5 years).
- B. The assessment of land/property for tax purposes 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).
- C. The assessment of land/property for tax purposes has some relationship to market prices, but there are significant differences between recorded values and market prices across different uses or types of users and valuation rolls are not updated regularly.
- D. The assessment of land/property for tax purposes is not clearly based on market prices.

The consensus scoring for this dimension by the panel members was B. They noted that the applicable law for this issue is the Local Government Act. The law says that values of property should be kept static (although market values change over time) until valuation roll is updated. 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 urbanization. However the city councils are not have not been in control of new developments in urban areas.

The panel members therefore made the following recommendations:

- There is need to ensure that valuations are done every five years
- There is need for analysis of taxation implications of the valuation of property to harmonise valuation and taxation issues
- There is need for the local authorities to come up with special rating areas to consider informal areas in urban areas
- There is need for survey updates of all areas to facilitate valuation process.
- The Local Government Act needs to be updated to keep with developments in urban areas.
- There is need for a separate law on valuation.

## **2.2 Public availability of valuation rolls [LGI 10 (ii)]**

The panel members had the following options to consider on this dimension:

- A. There is a policy that valuation rolls be publicly accessible and this policy is effective for all properties that are considered for taxation.
- B. There is a policy that valuation rolls be publicly accessible and this policy is effective for most of the properties that are considered for taxation.

- C. There is a policy that valuation rolls be publicly accessible and this policy is effective for a minority of properties that are considered for taxation.
- D. There is no policy that valuation rolls be publicly accessible.

The panel members settled for option A as their consensus score. They noted that a lot of people had no access to the valuation role because it is centrally kept. The city authorities need to improve on methods of disseminating the valuation roll to property holders. The property holders also need to pressurize the city authorities to get services and benefits with respect to the taxes levied on their property.

### **2.3 Exemptions from property taxes are justified and transparent [LGI 11 (i)]**

The options on this dimension were as follows:

- A. There are limited exemptions to the payment of land/property taxes, and the exemptions that exist are clearly based on equity or efficiency grounds and applied in a transparent and consistent manner.<sup>36</sup>
- B. There are limited exemptions to the payment of land/property taxes, and the exemptions that exist are clearly based on equity or efficiency grounds but are not applied in a transparent and consistent manner.
- C. The exemptions to the payment of land/property taxes are not always clearly based on equity or efficiency grounds and are not always applied in a transparent and consistent manner.
- D. It is not clear what rationale is applied in granting an exemption to the payment of land/property taxes and there is considerable discretion in the granting of such exemptions.

The chosen consensus option for this dimension was A. The panel members noted that 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 panel members highlighted the following recommendation on this issue:

- There is need for analysis of the justification of some of the exemptions especially where they are raising incomes e.g. churches.
- There is need to add or remove some exemptions for public interest.
- There is need to update local government act which make provisions for any exemptions.
- There is need for government to have up to date information on land and property there in.

### **2.4 Property holders liable to pay property tax are listed on the tax roll [LGI 11 (ii)]**

The scoring options for this dimension included the following:

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<sup>36</sup> Application in a 'transparent and consistent manner' means that the basis for the exemption is clearly defined, widely disseminated and uniformly applied.

- A. More than 80% of property holders liable for land/property tax are listed on the tax roll.
- B. Between 70% and 80% of property holder liable for land/property tax are listed on the tax roll.
- C. Between 50% and 70% of property holder liable for land/property tax are listed on the tax roll.
- D. Less than 50% of property holders liable for land/property tax are listed on the tax roll.

The panel members were not able to score on this dimension due to lack of information and absence of a member from tax authorities. However they noted that the city councils do not know have up to date information on how much property there is and the growth rate. They also noted that the valuation roll can miss out some properties. In addition the system of deciding on the tax rate on property is not transparent.

According to Malawi revenue officials interviewed, in Malawi, property taxes are administered by local councils. The taxes are called city rates. Besides this tax, there is tax on the income derived from letting out a property. The income received by property owner is supposed to be tax together with other incomes. In most cases, the effective tax rate is 30% [the top rate for individuals]

It is the duty of the property owner to self assess himself and pay the taxes. The level of non compliance is very high. Most persons do not comply as such the cost of collection by MRA is high. However the appropriate score for this dimension was chosen as A.

## **2.5 Assessed property taxes are collected [LGI 11 (iii)]**

The range of rankings under this dimension was as follows:

- A. More than 80% of assessed property taxes are collected.
- B. Between 70% and 80% of assessed property taxes are collected.
- C. Between 50% and 70% of assessed property taxes are collected.
- D. Less than 50% of assessed property taxes are collected.

The panel members were also not able to score on this dimension due to lack of information. They urged the country coordinator to consult city officials to get such information. One of the general recommendation was that there is need for proper development planning and control to ensure that the property taxes are maximized.

The MRA officials interviewed scored A for this dimension. They however felt that in terms of administrative costs- it is costly on the part of MRA to police compliance of income tax due from property earners who mostly do not comply with filing of returns. The cost of compliance by property owner seems to be high.

## **2.6 Property taxes correspondence to costs of collection [LGI 11 (iv)]**

The range of options under this dimension was as follows:

- A. The amount of property taxes collected exceeds the cost of staff in charge of collection by a factor of more than 5.
- B. The amount of property taxes collected is between 3 and 5 times cost of staff in charge of collection.
- C. The amount of property taxes collected is between 1 and 3 times cost of staff in charge of collection.
- D. The amount of property taxes collected is less than the cost of staff in charge of collection.

The panel members were not able to score on this dimension. Interviews with MRA officials highlighted that the amount of taxes collected is average. They therefore opted for C as an appropriate score for this dimension. They indicated that it is difficult to indicate the amounts of taxes collected in absolute terms. Other people pay by way of withholding taxes which are creditable at the end of the year. The tax recording systems are very manual as such it is difficult to ascertain the values.

## **3.0 General Comments/Recommendations**

After due consideration, the panel members made the following comments/recommendations on how policies and governance of land valuation and taxation can be improved:

- There is need to review the relevance and application of the valuation rolls in the local government act.
- There is need to review the local government act to clearly articulate separate valuation issues
- It is also necessary to decide legality of how rates on property are decided considering that there are no elected councilors as per requirements by the local government act.
- Malawi should develop a comprehensive income tax on property that should be administered by either city council [local governments] or MRA [centrally], with one low tax rate say 15%, and property rates as allowable deductions. Alternatively the country should develop a uniform property tax that caters for all property owners within cities across the country, at the same time drop the income tax on earnings.



### Individual and Consensus Ranking by the Expert Panel Members on Land Valuation and Taxation

LGI	Dimension Description	Ranking by Expert Panel Members				Consensus Ranking
		1	2	3	4	
10 i	Clear process of property valuation	B	B	B	B	<b>B</b>
10 ii	Public availability of valuation rolls	A	A	C	A	<b>A</b>
11 i	Exemptions from property taxes are justified and transparent	A	A	A	A	<b>A</b>
11 ii	Property holders liable to pay property tax are listed on the tax roll					<b>A</b>
11 iii	Assessed property taxes are collected					<b>A</b>
11 iv	Property taxes correspondence to costs of collection					<b>C</b>

Assessment of 11(ii), 11(iii) and 11(iv) based on interviews with two tax officials from Malawi Revenue Authority (MRA) –Mr. Enock Hapala & Mr. Crosby Phiri

**Draft Aide Memoire of the Expert Panel Workshop on Public Land Management**  
**Venue: Reserve Bank Club, Lilongwe, 26 October, 2011**

**1.0 Introduction**

The Land Governance Assessment Framework (LGAF) is a diagnostic tool designed to identify areas where policy interventions may be needed to improve governance in the land sector. The LGAF groups land topics into five thematic areas; (i) Legal and Institutional Framework; (ii) Land Use Planning, Management and Taxation; (iii) Management of Public Lands; (iv) Public Provision of Land Information; and (v) Dispute Resolution and Conflict Management. Within these thematic areas, 21 Land Governance Indicators (LGI) have been developed. Each of the LGIs was further broken down into a number of dimensions ranging from 2 to 6. Thus, the LGAF study is based on the assessment of 80 dimensions.

A core strategy for the implementation of the LGAF is the setting of Expert Panels of 3-5 members to carry out both individual and consensus assessments of a number of given dimensions in a day's workshop. One of the 7 Expert Panels is on **Public Land Management**. The Panel has 16 LGAF dimensions to be assessed. Only 2 Panel Members attended the panel session despite other members confirming to attend. A decision was reached by the Ministry to proceed with the session and share the report with other members for their inputs. The panel members who attended were: (i) Mr. Oscar Matope – Regional Commissioner for Lands, Central region (ii) Mr. James Mwenda, Lands Officer for Lilongwe District Council and (iii) Mr. John Mlava, a Land expert from University of Malawi, Bunda College of Agriculture. The session was also attended by Mr. Francis Mukhupa, Economist in the Policy and Planning Department, Ministry of Lands, Housing and Urban Development.

The workshop was carried out in two sessions. During the first session, the Country Coordinator introduced the LGAF and provided a brief description of each of the 16 dimensions and the procedure to be followed in their assessment. The second session involved the panel members undertaking individual scorings of the indicators dimensions under this panel. The rankings by the individual panel members were recorded on a master scoring sheet (see Annex A). This was followed by discussion and consensus assessment of each dimension as well as providing possible policy commentary.

**2.0 Assessment and Discussions of the Dimensions**

**2.1 Public Land Ownership is justified and implemented at the appropriate level of government: [LGI 12 (i)]**

Under this dimension, the following options were considered:

- A. Public land ownership is justified by the provision of public goods at the appropriate level of government and such land is managed in a transparent and effective way.

- B. Public land ownership is generally justified by the provision of public goods at the appropriate level of government but management may be discretionary.
- C. Public land ownership is justified in most cases by provision of public goods but responsibility is often at the wrong level of government.
- D. Public land ownership is not justified by the cost effective provision of public goods.

All three panel members individually chose option B which states that “Public land ownership is generally justified by the provision of public goods at the appropriate level of government but management may be discretionary.” They noted that public land is managed by different government agencies including Ministry of Lands, other ministries, city councils and district council. However there is no information on how the public land is managed by the different entities. They also noted that not all communities are able to identify different types of land including public land in their areas. They therefore made the following recommendations:

- All public land should be properly surveyed and boundaries demarcated.
- There is need for public awareness to disseminate information on what is public land to local leaders and communities.

## **2.2 Complete recording of publicly held land: [LGI 12 (ii)]**

The options available for this dimension were as follows:

- A. More than 50% of public land is clearly identified on the ground or on maps.
- B. Between 30% and 50% of public land is clearly identified on the ground or on maps.
- C. Less than 30% of public land is clearly identified on the ground or on maps.
- D. Public land is not clearly identified on the ground or on maps.

The three panel members all settled for B on this dimension. Option B states that, “between 30% and 50% of public land is clearly identified on the ground or on maps”. They noted that public land which is clearly identified is mainly large pieces such as national parks but for smaller pieces held by government institutions such as schools, hospitals, the land is often not clearly identified. There has not been clear up to date recording of all public land by the authorities so that what is being used are old maps. The panelists also noted that there are no clear mechanisms to control abuse or encroachment on public land. This results in surrounding communities using part of public land with no consequences (e.g. around schools, road reserves or in wetlands)

The panelists called for urgent and systematic updating of land information for all types of land to clearly identify public land.

## **2.3 Assignment of management responsibility for public land: [LGI 12 (iii)]**

The rankings for this dimension were as follows:

- A. The management responsibility for different types of public land is unambiguously assigned.

- B. There is some ambiguity in the assignment of management responsibility of different types of public land but this has little impact on the management of assets.
- C. There is enough ambiguity in the assignment of management responsibility of different types of public land to impact to some extent on the management of assets.
- D. There is serious ambiguity in the assignment of management responsibility of different types of public land with major impact on the management of assets.

In their individual assessment, two panel members opted for C while one opted for B. The panelists who chose C noted that most users of public land do not clearly know their roles on the land and they sometimes do not know what to do when disputes arise. They also do not share information with each other and with Ministry of Lands. It was also noted that different government institutions fail to deal with other when there is abuse of land or land dispute. The panel member who opted for B indicated that sometimes there are no clear responsibilities on management of public land between those using it and the authorities such as Ministry of Lands or District Councils.

After discussions, the consensus option for this dimension was C which states that ‘there is enough ambiguity in the assignment of management responsibility of different types of public land to impact to some extent on management of assets’. As a recommendation, the panel members urged government to clearly spell out responsibilities for management of public land. This could be included in the lease documents.

#### **2.4 Resources available to comply with responsibilities: [LGI 12 (iv)]**

Under this dimension, the panelists were considering these options:

- A. There are adequate budgets and human resources that ensure responsible management of public lands.
- B. There are some constraints in the budget and/or human resource capacity but the system makes most effective use of available resources in managing public lands.
- C. There are significant constraints in the budget and/or human resource capacity but the system makes effective use of limited available resources in managing public lands.
- D. There are either significantly inadequate resources or marked inefficient organizational capacity leading to little or no management of public lands.

The range of chosen rankings was between C and D with two of the panel members choosing D, while the remaining one chose C. All panelists acknowledged that there is limited/insufficient human capacity and financial resources to ensure responsible management of public lands. This results in very few activities being done and failure to control abuse of public land. For example they noted that there is very little inspection of trading centers as public lands by local authorities and Ministry of Lands. The panelists also noted that there has been little capacity building for land management staff in the past ten years.

Following discussions, the panel members settled for C as a consensus ranking. They noted that government within its limited resources is trying to manage public lands and there are also some civil society organizations assisting government on sensitizing communities on land matters. The panelists made the following recommendations:

- There is need for the ministries dealing with land and civil society organizations working on land to do more lobbying for elevating the profile of the land sector in national development priorities such as the Malawi Growth and Development Strategy.
- There is need for more lobbying for increased funding and capacity for land management from government and civil society.
- Civil society working on land issues need to work in harmony and collaboration with government to increase impact and effectiveness of programmes.
- There is need for intensive capacity building in the land sector to ensure effective land management.

## **2.5 Inventory of public land is accessible to the public: [LGI 12 (v)]**

The following were the options for assessing this dimension:

- A. All the information in the public land inventory is accessible to the public.
- B. All the information in the public land inventory is accessible to the public, but information for some types of public land (land used by the military, security services, etc) is not available for justifiable reasons.
- C. All the information in the public land inventory is only available for a limited set of public property and there is little or no justification why records are not accessible.
- D. No information in the public land inventory is accessible to the public.

The range of chosen rankings under this dimension was between B and C with one of the panel members choosing B, while the remaining two choosing C. The panel member who chose option B – “the information in the public land inventory is accessible to the public, but information for some types of public land (land used by the military, security services, etc) is not available for justifiable reasons” justified his choice by noting that information and maps are available but only at deeds registry in Lilongwe and can be obtained upon payment of search fees of MK5000. The panelists who opted for C justified their choice based on the following:

- Land information including that of public land is not publicly accessible.
- Most public land is not properly surveyed and surrounding communities do not know boundaries of public land except when there is a dispute.

Following deliberation, they chose C as a consensus option. They made the following recommendations:

- There is need for wide dissemination of how land information is managed and can be accessed.
- Land information management should be decentralized to district and local levels to allow more people to access the information.
- Different media should be used disseminate and share land information.

## **2.6 The key information on land concessions is accessible to the public: [LGI 12 (vi)]**

The panel members had the following options to consider under this dimension:

- A. The key information for land allocations (the locality and area of the land allocation, the parties involved and the financial terms of the land allocation) is recorded and publicly accessible.
- B. The key information for land allocations (the locality and area of the land allocation, the parties involved and the financial terms of the land allocation) is only partially recorded but is publicly accessible; or the key information is recorded but only partially publicly accessible.
- C. The key information for land allocations (the locality and area of the land allocation, the parties involved and the financial terms of the land allocation) is recorded or partially recorded but is not publicly accessible.
- D. There is no recorded information on land allocations.

All three panel members in their individual assessments chose option C which states that “the key information for concessions (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”, as the appropriate ranking for this dimension. They noted the following issues to justify their option:

- Records and information on concessions and land allocations is available but is not publicly available or accessible.
- Communities and stakeholder are not properly informed when concessions are granted e.g. mining licences as these have implications on land rights.

They therefore urged government to ensure that all land transactions are made transparently and using the media to disseminate the information to the public and concerned stakeholders.

## **2.7 Transfer of expropriated land to private interests: [LGI 13 (i)]**

Under this dimension, the panelists had the following scenarios to consider:

- A. Less than 10% of land expropriated in the past 3 years is used for private purposes.
- B. Between 10% and 30% of land expropriated in the past 3 years is used for private purposes.

- C. Between 30% and 50% of land expropriated in the past 3 years is used for private purposes.
- D. More than 50% of land expropriated in the past 3 years is used for private purposes.

All panelists individually chose option A. they noted that there has been little land expropriated and used for private interest. The only examples they could mention were on Nsanje Port city for urban expansion and under World Bank funded 'Kudzigulila Malo project'- Community Based Rural Land Development Project. This has involved the state obtaining land from customary land (in case of Nsanje port) to allocate to private developers and from private leasehold estate holders (in case of Kudzigulira malo project) to give to landless or land constrained rural farmers.

Under the Land Acquisition Act, the Minister is empowered to acquire land where he considers it desirable or expedient in the interest of Malawians to do so. The Minister may acquire the land either compulsorily or by agreement after negotiations. The guiding principle is that the affected properties be compensated for the loss in form of money or are replaced with equivalents elsewhere. The process of identifying the affected persons and scope of properties as well as assessment is the responsibility of the government.

Where land is acquired, compensation is paid to the land owner as may be agreed upon or determined by the Act. The practice is that, once the government has an approved project and funding has been secured, the process of compensation is initiated through sensitization meetings by the traditional leaders, and assessment is done and compensation paid. Land acquired by government can be allocated to private interest largely for investment purposes. In statutory planning areas, government provides infrastructure and allocated the plots to private individuals or corporate entities for development. With a strong private sector, infrastructure provision should not be government responsibility.

## **2.8 Speed of use of expropriated land: [LGI 13 (ii)]**

This dimension comprised of the following options to select from:

- A. More than 70% of the land that has been expropriated in the past 3 years has been transferred to its destined use.
- B. Between 50% and 70% of the land that has been expropriated in the past 3 years has been transferred to its destined use.
- C. Between 30% and 50% of the land that has been expropriated in the past 3 years has been transferred to its destined use.
- D. Less than 30% of the land that has been expropriated in the past 3 years has been transferred to its destined use.

In their individual assessments, two panel members opted for A as their preferred ranking while one chose B because he felt that the process is sometimes longer than 3 years due to issues of compensation and registration. Option A (More than 70% of the land that has been expropriated in the past 3 years has been transferred to its destined use) was agreed as the consensus option.

## **2.9 Compensation for expropriation of registered property [LGI 14 (i)]**

The range of rankings under this dimension was as follows:

- A. Where property is expropriated, fair compensation, in kind or in cash, is paid so that the displaced households have comparable assets and can continue to maintain prior social and economic status.
- B. Where property is expropriated, compensation, in kind or in cash, is paid so that the displaced households have comparable assets but cannot maintain prior social and economic status.
- C. Where property is expropriated, compensation, in kind or in cash, is paid but the displaced households do not have comparable assets and cannot maintain prior social and economic status.
- D. Compensation is not paid to those whose rights are expropriated.

The individual chosen rankings were between B and C with two panel members choosing B, while one chose C. Those who chose option B noted that the valuation at the time of valuation may be appropriate but there are always delays in paying compensation by government due to budgetary constraints. All compensation is done by government through Office of President and Cabinet. In a number of cases, government fails to pay compensation and relies on developers to pay compensation. The delays in effecting compensation affect the attainment of prior social and economic status for those who have lost their land. According to the law, valuation report is valid for six months after that if compensation is not made, the property needs to be reassessed. This provision is often ignored.

The panelists highlighted that the process of assessment of compensation is based on:

- Market value,
- Heads of claim by the owner
- Special value of the owner
- Injurious affection (e.g. subdivision made)
- Severance allowance
- Disturbance allowance

For business entities, goodwill of the owner is also taken into consideration when determining compensation value. Compensation on agricultural land is based on yield loss and not market value of the land as in most cases land under customary land has little or no value. After discussions, the consensus option was chosen to be B – Between 50% and 70% of the land that



has been expropriated in the past 3 years has been transferred to its destined use. Their assessment of the matrix below is presented herewith:

Status	Fairness of compensation	Compensated rights	Timeliness of compensation	Implementation	Comments
Registered urban property	2	2	3	2	Delays in payments and failure to implement due to political sensitivities
Registered rural property	2	2	3	2	Same as above
<b>Codes:</b>	1 = Compensation enabling comparable assets and maintenance of social and economic status; 2 = Compensation enabling comparable assets but not maintenance of social and economic status; 3 = little or no compensation paid	1 = All secondary rights recognized; 2 = Some secondary rights recognized; 3 = No secondary rights recognized.	1 = Most receive compensation within 1 year; 2 = About half receive compensation within 1 year; 3 = Most do not receive compensation within 1 year.	1 = Consistently implemented; 2 = Implemented with some discretion; 3 = Implemented in highly discretionary manner	

Their recommendation was for government to improve on timeliness of effecting compensation and minimize on relying on developers for compensation.

## 2.10 Compensation for expropriation of all rights [LGI 14 (ii)]

The available options for this dimension were as follows:

- A. Fair compensation, in kind or in cash, is paid to all those with rights in expropriated land (ownership, use, access rights etc.) regardless of the registration status.
- B. Compensation, in kind or in cash, is paid however the level of compensation where rights are not registered does not allow for maintenance of social and economic status.
- C. Compensation, in kind or in cash, is paid for some unregistered rights (such as possession, occupation etc.), however those with other unregistered rights (which may include grazing, access, gathering forest products etc.) are usually not paid compensation.
- D. No compensation is paid to those with unregistered rights of use, occupancy or otherwise.

All panel members individually chose C as a preferred option. Option C states that “compensation, in kind or in cash, is paid for some unregistered rights (such as possession, occupation etc.), however those with other unregistered rights (which may include grazing, access, gathering forest products etc.) are usually not paid compensation” They noted that not all right are assessed for compensation e.g. grazing rights, access rights.

<b>Affected Party</b>	<b>Legislation</b>	<b>Provisions</b>
Land <b>Owner/Occupier</b>	Public Roads Act ( <i>chapter 69:02</i> )	<ul style="list-style-type: none"> <li>• The law stipulates payment of cash compensation based on loss or damage or destruction to structures. No compensation on land.</li> </ul>
Land <b>Owner/Occupier</b>	Public Roads Act ( <i>chapter 69:02</i> )	<ul style="list-style-type: none"> <li>• The law stipulates that land owners are entitled to reasonable compensation offered by government on customary land</li> <li>• The law stipulates that land owners can be compensated for land to land if alternative land is available.</li> <li>• The law stipulates that land owners can be compensated for land to money if there is not alternative land or if the offered alternative land is not economically productive</li> </ul>
Land <b>Owner/Occupier</b>	Public Roads Act ( <i>chapter 69:02</i> )	<ul style="list-style-type: none"> <li>• The law stipulates that no compensation to improvements on land within road reserves ( section <b>44</b>)</li> <li>• The law stipulates that no compensation to squatters unless they occupy the land continuously for a period of more than <b>7</b> years.</li> </ul>
Land Owner/Occupier	Land Acquisition Act ( <i>Chapter 57:04</i> )	<ul style="list-style-type: none"> <li>• The law stipulates that compensation based on assessment done by government and agreed by parties.</li> <li>• The law stipulates that compensation given when land is acquired.</li> <li>• The law stipulates that compensation not to exceed market value.</li> </ul>
<b>Land Owner/Occupier</b>	<b>Land Act</b> ( <i>Chapter 57:01</i> )	<ul style="list-style-type: none"> <li>• The law stipulates that reasonable cash compensation to loss of affected persons for loss of land</li> </ul>
Land Owner/Owner	Customary Land Act	<ul style="list-style-type: none"> <li>• The law favours land for land compensations</li> </ul>

A recent case in 2011 is whereby cash compensation was to be given for loss of land to the affected persons for the land identified by government to construct a district hospital for Phalombe district. The land expropriated was on customary tenure and the affected households were 82. These had their agricultural fields taken away for the project and there were no buildings on the land. Upon assessment of the appropriate compensation by the district council, the Office of the President and Cabinet was to pay compensation to the individual households who owned the land. Below is the summary assessment of the supporting matrix

Status	Fairness of compensation	Compensated rights	Timeliness of compensation	Implementation	Comments
Unregistered urban property	2	2	3	2	Delays in compensation by government
Unregistered rural property	2	2	3	2	Same as above
Codes:	1 = Compensation enabling comparable assets and maintenance of social and economic status; 2 = Compensation enabling comparable assets but not maintenance of social and economic status; 3 = little or no compensation paid	1 = All secondary rights recognized; 2 = Some secondary rights recognized; 3 = No secondary rights recognized.	1 = Most receive compensation within 1 year; 2 = About half receive compensation within 1 year; 3 = Most do not receive compensation within 1 year.	1 = Consistently implemented; 2 = Implemented with some discretion; 3 = Implemented in highly discretionary manner	

The panelists made the following **recommendations**:

- There is need for more funding in government budget for compensation
- There is need for decentralization of payment of compensation functions to district councils to assist in speeding up the process.

## 2.11 Promptness of compensation [LGI 14 (iii)]

The options for assessing this dimension were as follows:

- More than 90% of expropriated land owners receive compensation within one year.
- Between 70% and 90% of expropriated land owners receive compensation within one year.
- Between 50% and 70% of expropriated land owners receive compensation within one year.
- Less than 50% of expropriated land owners receive compensation within one year.

All the panel members chose ranking D which states that “less than 50% of expropriated land owners receive compensation within one year”. They noted that if it involves a private developer, the process takes less time as the developer is asked to pay compensation but if it is only government, the process takes long.

The recommendations put forward by the panelists were that:

- Government should decentralize compensation payment

- There is need to sensitize communities on the rights and responsibilities with respect to compensation e.g. in valuation process.

## **2.12 Independent and accessible avenues for appeal against expropriation [LGI 14 (iv)]**

This dimension comprised of the following options for the panelists to assess on:

- A. Independent avenues to lodge a complaint against expropriation exist and are easily accessible.
- B. Independent avenues to lodge a complaint against expropriation exist but there are access restrictions (i.e. only accessible by mid-income and wealthy).
- C. Avenues to lodge a complaint against expropriation exist but are somewhat independent and these may or may not be accessible to those affected.
- D. Avenues to lodge a complaint against expropriation are not independent.

Two panelists chose A while one chose B because he felt that most communities do not know their rights on compensation. The panelists could not reach a consensus as they felt the situations contained elements of both A and B.

The recommendations put forward on this dimension were as follows:

- There is need to establish local land tribunal to deal with appeals at local level
- There is need to sensitise local communities on available avenues for appeal.

## **2.13 Timely decisions regarding complaints about expropriation [LGI 14 (v)]**

The range of options for this dimension is as follows:

- A. A first instance decision has been reached for more than 80% of the complaints about expropriation lodged during the last 3 years.
- B. A first instance decision has been reached for between 50% and 80% of the complaints about expropriation lodged during the last 3 years.
- C. A first instance decision has been reached for between 30% and 50% of the complaints about expropriation lodged during the last 3 years.
- D. A first instance decision has been reached for less than 30% of the complaints about expropriation lodged during the last 3 years.

All three panelists individually opted for A. but they noted that this applies to received complaints. The challenge is that most people in the rural areas do not lodge complaints or they do not know where to complain or appeal.

## **2.14 Openness of public land transactions [LGI 15 (i)]**

The available rankings for this dimension were as follows:

- A. The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is greater than 90%.

- B. The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is between 70% and 90%.
- C. The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is between 50% and 70%.
- D. The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is less than 50%.

All the three panel members settled for D as the scenario in Malawi. They noted that there are no open and transparent systems for disposing public land and allocations are not publicly displayed. They also noted frequent political influences in allocations which make it difficult to use public means. Option D which states that, “the share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is less than 50%” was considered to be more appropriate and was chosen as the consensus option.

As highlighted in the table below, the process for allocating land for all categories is not done by open tender or auction but by ways other than open tender or auction. The considered market values are less than 50% of the market prices for all allocated lands.

<b>Destined use of allocated land</b>	<b>Area leased out/sold in last 3 years (ha)</b>	<b>Transparent process</b>	<b>Consideration compared to market values</b>	<b>Percentage of allocated lands that were sold</b>
Residential	No information	3	3	No information
Agriculture & NR	„	3	3	„
Manufacturing	„	3	3	„
Commerce/building	„	3	3	„
Tourism	„	3	3	„
<b>Codes:</b>		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.	

### **Policy/Reform Recommendation**

One of the recommended actions is to publicize list of applicants including when applied and those who have been allocated land.

### **2.15 Collection of payments for public leases [LGI 15 (ii)]**

The range of rankings under this dimension was as follows:

- A. More than 90% of the total agreed payments are collected from private parties on the lease of public lands.
- B. Between 70% and 90% of total the agreed payments are collected from private parties on the lease of public lands.

- C. Between 50% and 70% of the total agreed payments are collected from private parties on the lease of public lands.
- D. Less than 50% of the total agreed payments are collected from private parties on the lease of public lands.

All panel members opted for D as the option for this dimension. They noted that although initial payment when allocation has been made is usually complied with, payment of land rents are not always complied by occupants. The government also does not have sufficient capacity and resource to collect land rents or enforce payments. They recommend strengthening of the public land authority with financial and human resources to enforce collection of land revenues.

## **2.16 Modalities of lease or sale of public land[LGI 15 (iii)]**

The panel members considered the following options under this dimension:

- A. All types of public land are generally divested at market prices in a transparent process irrespective of the investor's status (e.g. domestic or foreign).
- B. Only some types of public land are generally divested at market prices in a transparent process irrespective of the investor's status (e.g. domestic or foreign).
- C. All types or some types of public land can be divested at market prices in a transparent process, but this only applies to a particular type of investor (e.g. domestic only or foreign only).
- D. Public land is rarely or never divested at market prices in a transparent process.

Under this dimension, one of the panel members chose option D, while the remaining two members chose B.

The panelists noted that when public land is allocated to private beneficiaries, the values are based on plot development charges for services such as surveying, roads and utilities and not on market values. These values are mostly less than market values. For government buildings, these are sold based on market values and mostly on open tender. It was also noted that for public land under Malawi Housing Corporation, development charges plus some profit margin are used to determine the plot value when allocating to private interests. Option B which states that, "only some types of public land are generally divested at market prices in a transparent process irrespective of the investor's status (e.g. domestic or foreign)" was thus chosen as the consensus answer.

## **Policy/Reform Recommendation**

The panel members made the following Recommendations

- The government and its agencies should promote to transparent and open systems of disposing public land and property to private interests
- The land values should be based on market values but putting some measures to support low income earners.

### Individual and Consensus Ranking by the Expert Panel Members on Public Land Management

LGI	Dimension Description	Ranking by Expert Panel Members			Consensus Ranking
		1	2	3	
12 i	Public land ownership is justified and implemented at the appropriate level of government	B	B	B	<b>B</b>
12 ii	Complete recording of publicly held land	B	B	B	<b>B</b>
12 iii	Assignment of management responsibility for public land	B	C	C	<b>C</b>
12 iv	Resources available to comply with responsibilities	D	D	C	<b>C</b>
12 v	Inventory of public land is accessible to the public	C	B	C	<b>C</b>
12 vi	Key information on land concessions is accessible to the public	C	C	C	<b>C</b>
13 i	Transfer of expropriated land to private interests	A	A	A	<b>A</b>
13 ii	Speed of use of expropriated land	A	A	B	<b>A</b>
14 i	Compensation for expropriation of registered property	B	C	B	<b>B</b>
14 ii	Compensation for expropriation of all rights	C	C	C	<b>C</b>
14 iii	Promptness of compensation	C	C	C	<b>C</b>
14 iv	Independent and accessible avenues for appeal against expropriation	A	A	B	<b>A/B</b>
14 v	Timely decisions regarding complaints about expropriation	A	A	A	<b>A</b>
15 i	Openness of public land transactions	D	D	D	<b>D</b>
15 ii	Collection of payments for public leases	D	D	D	<b>D</b>
15 iii	Modalities of lease or sale of public land	B	B	D	<b>B</b>



**Aide Memoire of the Expert Panel Workshop on Public Provision of Land Information**  
**Venue: Reserve Bank Club, Area 47, Lilongwe 27 October, 2011**

**1. Introduction**

**1.1** The Land Governance Assessment Framework (LGAF) is a diagnostic tool designed to identify areas where policy interventions may be needed to improve governance in the land sector. The LGAF divides land issue into five thematic areas; (i) Legal and Institutional Framework; (ii) Land Use Planning, Management and Taxation; (iii) Management of Public Lands; (iv) Public Provision of Land Information; and (v) Dispute Resolution and Conflict Management. In line with these thematic areas, 21 Land Governance Indicators (LGI) have been developed. Each of the LGIs was further broken down into a number of dimensions ranging from 2 to 6. Thus, the LGAF study is based on the assessment of 80 dimensions.

A core strategy for the implementation of the LGAF is the setting up of Expert Panels of 3-5 members to carry out both individual and consensus assessments of a number of given dimensions in a day's workshop. One of the eight expert panel workshops is on **Public Provision of Land Information**. The panel has 16 LGAF dimensions to assess. Of the five Expert Panel Members invited for this panel only two attended the session. They are: (i) Mr. H.S.K. Mumba from Lilongwe City Assembly and Mr. Shadreck Ulemu, Project Manager for BESTAP Project. They were joined by Mr. Max Wengawenga, Principal Economist in the Planning Department of Ministry of Lands, Housing and Urban Development. The panelist decided to go ahead with the meeting despite the absence of members from the land registry who promised to join in later. It was agreed that the results should be sent to the other members for their inputs as there was no more time to keep postponing the panel sessions. A follow-up meeting was arranged with registry officials at the central registry and this accorded the registry officials to contribute to the assessment. Their assessments and comments have been included in this report.

To aid the panel members in their assessment process, the Country Coordinator (CC) sent the following materials online to the panel members prior to the workshop:

- LGAF Annex 1
- Assessment forms and scoring sheets
- Land Tenure Typology in Malawi
- Land Use Act
- Information provided by the Expert investigators especially those relating to the theme:

The meeting was facilitated by the country coordinator who explained the objective of the Panel Workshop and a brief description of each of the 16 dimensions and the procedure to be followed in their assessment. The individual panelists were then given time to study the indicators and make their individual scorings. The rankings by the individual members were recorded on a

combined scoring sheet (see Annex A). The second session was devoted to the collective discussion and consensus assessment of each dimension as well as possible policy/research/reform suggestions.

## **2.0 Assessment and Discussions of the Dimensions**

### **2.1 Women's rights are recognized in practice by the formal system (urban and rural areas) [LGI 2 (iv)]**

This dimension had the following options to choose from:

- A. More than 45% of land registered to physical persons is registered in the name of women either individually or jointly.
- B. Between 35% and 45% of land registered to physical persons is registered in the name of women either individually or jointly.
- C. Between 15% and 35% of land registered to physical persons is registered in the name of women either individually or jointly.
- D. Less than 15% of land registered to physical persons is registered in the name of women either individually or jointly.

Only one panel member had experience to score on this dimension. He estimated it to be C for mainly urban land. He indicated that for rural land, most land is under customary and not registered and the only registered land is under estates and these are owned mostly by men. The members however noted that with improvement in inheritance laws in the past 5 years, more women are inheriting land.

According to the registry officials based on their records, **D** should be appropriate. It can't go beyond 15%. Traditionally, people believe property is in the hands of men more especially in the rural areas though gradually women in the urban areas have started coming up to own land because of understanding their rights, but still not more than 15%.

### **2.2 First-time registration on demand is not restricted by inability to pay the formal fees [LGI 3(iii)]**

The range of rankings available for this dimension were as follows:

- A. The costs for first time sporadic registration for a typical urban property does not exceed 0.5% of the property value.
- B. The costs for first time sporadic registration for a typical urban property does not exceed 2% of the property value.
- C. The costs for first time sporadic registration for a typical urban property does not exceed 5% of the property value.
- D. The costs for first time sporadic registration for a typical urban property exceeds 5% of the property value.

The consensus option chosen by the panel members was B. This applies for most typical urban areas which are zoned and determined whether they are residential (low, medium and high density) or commercial. The cost of registration was estimated at about MK90000. The costs include the following:

<b>Actions or documentation required</b>	<b>Administrative Activity/Cost</b>	<b>Judicial Costs / Taxes Incurred</b>
Surveying	preparation of deed plan 50000	
Book binding	There is no charge. It is within the services	
Town planning permission	Town planners have their own charges	
Stamp duty	3% of total cost	
Registration at registrar general	5000	
Registration at land registry	5000	
Value added tax		16.5%
Ground rent	1000/ha	

Legal charges for lawyers assisting to process the transaction are based on published schedules which is approximately 10% of the value of property. Other costs include transport, time and other costs to reach the office of the registrar general which is based in Blantyre. This is most often seen as a deterrent to low income people.

For Traditional Housing Areas the cost of getting a certificate of occupancy is MK5000. Other costs include ground rent.

According to the registry officials, **D** was opted as an appropriate score for this dimension. However they noted that the majority of the urban dwellers live in informal areas which are larger than zone areas as such many do not register their property.

### **2.3 First-time registration does not entail significant informal fees.[LGI 3(iv)]**

This dimension was assessed using the following options:

- A. There are no informal fees that need to be paid to effect first registration.
- B. There are informal fees that need to be paid to effect first registration, but the level of informal fees is significantly less than the formal fees.
- C. There are informal fees that need to be paid to effect first registration and the level of informal fees is about the same as the formal fees.

- D. There are informal fees that need to be paid to effect first registration and the level of informal fees is significantly higher than the formal fees.

The panel members in their discussion settled for B. informal fees are those fees not gazetted under the Registered Land Act. For example in traditional housing areas, there are no fees for deed plan and registration but only cost to obtain certificate of occupancy and ground rent. Informal costs include transport costs and other unplanned costs. According to the registry officials, informal fees do not exist, therefore A was opted.

#### **2.4 Mapping of registry records [LGI 16 (i)]**

The range of options available for the panel members included the following:

- A. More than 90% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre.
- B. Between 70% and 90% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre.
- C. Between 50% and 70% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre.
- D. Less than 50% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre.

The panel members noted that registration in urban planning areas is based on deed plan signed by the Surveyor General. However there are problems in deed plans in that the surveyor general has not been updating the main map due to human capital and financial deficiencies at Surveys Department. There are also some reported malpractices resulting in fake deed plans being produced. For rural estates, registration has been based on sketch maps and not fully survey maps. Option B which states that ‘between 70% and 90% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre’ was thus chosen as the option closer to real situation.

The registry officials felt that the appropriate score for this dimension is A. They indicated that property can’t be registered if not identified. Any registered property must have a map.

#### **2.5 Economically relevant private encumbrances are recorded [LGI 16(ii)]**

The options for this dimension were as follows:

- A. Relevant private encumbrances are recorded consistently and in a reliable fashion and can be verified at low cost by any interested party.
- B. Relevant private encumbrances are recorded consistently and in a reliable fashion but the cost of accessing them is high.
- C. Relevant private encumbrances are recorded but this is not done in a consistent and reliable manner.

D. Relevant private encumbrances are not recorded.

Panel members settled for option A as the prevailing situation in Malawi. The panel members noted that encumbrances are recorded and can be obtained at the registry upon payment of search fees of MK5000. The encumbrances include mortgages, cautions or court orders and disputes over that property. The main challenge noted is that the land registry is not properly supervised and organized.

The registry officials also opted for A as an appropriate score. They indicated that there are two types of register i.e. Deed and Charge but they refer to them as a facility. They are therefore, recorded side by side with the registry. After binding, it becomes a public paper at the cost of MK5000.

## **2.6 Economically relevant public restrictions or charges are recorded [LGI 16(iii)]**

The options for this dimension were as follows:

- A. Relevant public restrictions or charges are recorded consistently and in a reliable fashion and can be verified at a low cost by any interested party.
- B. Relevant public restrictions or charges are recorded consistently and in a reliable fashion but the cost of accessing them is high.
- C. Relevant public restrictions or charges are recorded but this is not done in a consistent and reliable manner.
- D. Relevant public restrictions or charges are not recorded.

The panel members settled for A as an option for this dimension. They noted the following issues: Only registry officials are allowed to search documents in the registry for security reasons Charges e.g. search fees are recorded and payment is made at a central accounts office There is need to improve the location and work place condition of the registry to ensure proper recording of information and security of information.

The panels also noted that there are many valuable uses of land that are not protected. These include river line areas, forest areas, national parks, watershed areas, mountains etc. These are considered to be public land but nobody has title deeds over them as they are easily encroached or misused. The registry officials agreed with the panelist on the score of A.

## **2.7 Searchability of the registry (or organization with information on land rights)[LGI 16(iv)]**

The available options for the dimension were as follows:

- A. The records in the registry can be searched by both right holder name and parcel.
- B. The records in the registry can only be searched by right holder name.

- C. The records in the registry can only be searched by parcel.
- D. The records in the registry cannot be searched by either right holder name or parcel.

The panel members agreed on option A noting that all information in the registry is searchable by deed plan which contain all information on name and parcel. The registry officials interviewed noted that in Malawi, the Parcel Number is used to identify a holder and their particulars. This means that the title deed number represents the parcel to identify the holder and property. C was opted as an appropriate score for this dimension.

## **2.8 Accessibility of records in the registry (or organization with information on land rights [LGI 16(v)]**

The range of options for this dimension included:

- A. Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, if any.
- B. Copies or extracts of documents recording rights in property can only be obtained by intermediaries<sup>37</sup> and those who can demonstrate an interest in the property upon payment of the necessary formal fee, if any.
- C. Copies or extracts of documents recording rights in property can only be obtained by intermediaries upon payment of the necessary formal fee, if any.
- D. Records on land rights are not publicly accessible or can only be obtained by paying an informal fee.

The panel members were of the view that B is the suitable option. They noted that a title holder can get a copy of a deed plan from the surveyor general upon payment of MK1500. A title holder can also get copies of land title and land certificates from the registry upon getting police report and payment of charges. Lawyers may also request information from the registry using a search warrant issued by the courts.

The registry officials interviewed agreed to opt for B as appropriate for this dimension.

## **2.9 Timely response to a request for access to records in the registry (or organization with information on land rights) [LGI 16(vi)]**

The options for this dimension included the following:

- A. Copies or extracts of documents recording rights in property can generally be obtained within 1 day of request.
- B. Copies or extracts of documents recording rights in property can generally be obtained within 1 week of request.

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<sup>37</sup>Intermediaries in relation to interested parties in land ownership records could include notaries, lawyers, and providers of housing finance etc., who assist with dealings in land.

- C. It generally takes more than 1 week after request to produce a copy or extract of documents recording rights in property.
- D. It is not unusual that an extract or copy of a record cannot be produced in response to a request as the original record cannot be located.

The panel members noted that the suitable option for this dimension was B considering that all extracts of documents from the registry have to be certified by the land registrar and this may take some time. The registry official interviewed indicated that as long as all the necessary documents are available, they try their best to assist as quickly as possible. They therefore, they opted for A.

## **2.10 Focus on customer satisfaction in the registry [LGI 17 (i)]**

The range of rankings for this dimension were as follows:

- A. There are meaningful published service standards, and the registry actively monitors its performance against these standards.
- B. There are meaningful published service standards, but the registry does not actively monitor its performance against these standards.
- C. Meaningful service standards have been established, but have not been published and there is little attempt to monitor performance against the standards.
- D. There are no meaningful service standards set and no attempt to monitor customer service.

The overall assessment of this dimension was between B and D with one of the panel members choosing B, the other choosing D. They could not come to a consensus as this needed to be checked with registry officials. If it exists, their quality is low and are not monitored.

The panel members therefore made the following recommendations:

- There is need to enhance capacity of the registry both human, financial and equipment.
- There is need to sensitise the general public on their role to monitor performance of the registry.

The Registry Officials opted for A as an appropriate score for this dimension. It was indicated that they go by standards hence strive to do the best in assisting on the spot.

## **2.11 Registry/ cadastre information is up-to-date [LGI 17 (ii)]**

The range of rankings under this dimension were:

- A. More than 90% of the ownership information in the registry/cadastre is up-to-date.
- B. Between 70% and 90% of the ownership information in registry/cadastre is up-to-date.
- C. Between 50% and 70% of the ownership information in registry/cadastre is up-to-date.

- D. Less than 50% of the ownership information in the registry/cadastre is up-to-date.

The agreed option for this dimension was C. They noted that there is a time lag for records to be updated once a transaction has been effected. In addition it was also noted that there are many other people outside government handling the transaction e.g. lawyers and valuers as such this takes more time.

The registry officials interviewed opted for **A** on this dimension. They indicated that their work is done according to their set standards.

## **2.12 Cost of registering a property transfer [LGI 18 (i)]**

The available options for this dimension are as follows:

- A. The cost for registering a property transfer is less than 1% of the property value.
- B. The cost for registering a property transfer is between 1% and less than 2% of the property value.
- C. The cost for registering a property transfer is between 2% and less than 5% of the property value.
- D. The cost for registering a property transfer is equal to or greater than 5% of the property value.

The panel members noted that the likely option for this dimension was D. They noted that one needs to engage a lawyer for such transactions and they charge transfer fees and consent fees. Legal charges may go up to 10% of the value as such this raises cost of registration. There are also many stages in the registration process and some of these e.g. getting a town planning committee approval is often delayed. There are also many institutions dealing with land management and this creates unnecessary beauracracy.

In traditional housing areas, the transfer cost is MK2000 and what is needed is the physical presences and identity for the owner.

According to registry officials, they do not value property but have a fixed amount of MK5000. Option **A** was therefore opted. They indicated that legal fees and other fees are not done at their office. Only registration is done at their office.

## **2.13 Financial sustainability of the registry [LGI 18 (ii)]**

The range of options for this dimension included the following:

- A. The total fees collected by the registry exceed the total registry operating costs.<sup>38</sup>

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<sup>38</sup> Total operating costs include all non-capital investment costs (i.e. salaries and wages, materials, transportation, etc.) associated with registry operation. Registry operating costs do not include long-term capital investment or associated depreciation expense.



- B. The total fees collected by the registry are greater than 90% of the total registry operating costs.
- C. The total fees collected by the registry are between 50% and 90% of the total registry operating costs.
- D. The total fees collected by the registry are less than 50% of the total registry operating costs.

Option D which states that, '*the total fees collected by the registry are less than 50% of the total registry operating costs*' was therefore chosen as the consensus option. Refer to LGI3iii for the type of fees. **D** was also opted by the registry official interviewed because they noted that they are operating below operating costs.

## **2.14 Capital investment [LGI 18 (iii)]**

The available options for this dimension as per LGAF manual were as follows:

- A. There is significant investment in capital in the system to record rights in land so that the system is sustainable but still accessible by the poor.
- B. There is investment in capital in the system to record rights in land but it is insufficient to ensure that the system is sustainable in the medium to long-term although the system is accessible by the poor.
- C. There is investment in capital in the system to record rights in land but it is insufficient to ensure that the system is sustainable and the poor have limited access.
- D. There is little or no investment in capital in the system to record rights in land.

The chosen ranking for this dimension was D. Members noted that there are low levels of investment (capital, human, equipment) in the registry as in any other government department. The members noted the initiatives through the BESTAP project to support capital investments for the registry covering the national office and three regional offices. More than US\$1million is being invested in physical capital including computers, software and networking systems for the registry. The equipment will be installed in 2012. The project is also capacity development of existing staff.

Comments from Registry officials:

Clients still complain with the MK5000 fee to be too high due to poverty. Poor people can't access land rights. Sustainability is very difficult. Therefore **C** was opted.

## **2.15 Schedule of fees is available publicly [LGI 19 (i)]**

The range of options under this dimensions are as follows:

- A. A clear schedule of fees for different services is publicly accessible and receipts are issued for all transactions.

- B. A clear schedule of fees for different services is not publicly accessible, but receipts are issued for all transactions.
- C. A clear schedule of fees for different services is publicly accessible, but receipts are not issued for all transactions.
- D. A clear schedule of fees for different services is not publicly accessible and receipts are not issued for all transactions.

The chosen ranking under this dimension was B. Government publishes schedules through government gazette but this may not be accessible by the majority and the information is not also publicized through other media forums. According to Registry officials, there is an outline of services displayed at their offices and after every transaction receipts are issued. They therefore opted for **A** as an appropriate option

## **2.16 Informal payments discouraged [LGI 19 (ii)]**

The options for this dimension included the following:

- A. Mechanisms to detect and deal with illegal staff behavior exist in all registry offices and all cases are promptly dealt with.
- B. Mechanisms to detect and deal with illegal staff behavior exist in all registry offices but cases are not systematically or promptly dealt with.
- C. Mechanisms to detect and deal with illegal staff behavior exist in some registry offices.
- D. Mechanisms to detect and deal with illegal staff behavior are largely non-existent.

Option D which states that ‘*Mechanisms to detect and deal with illegal staff behavior are largely nonexistent*’ was the consensus option. Members noted that senior staff in the Ministry of Lands are supposed to supervise and monitor the operations of the registry but there are no established mechanisms to deal with illegal staff behavior. They therefore highlighted the following recommendations:

- The need to improve human capital investment for the registry to include trained personnel such as lawyers
- The need to computerize, modernize and network the registry systems to check illegal practices and speed up registry process
- The need for study tours and attachments for staff of the registry to learn what other registries are doing in other countries.

According to registry officials, the behavior is there and some members of staff have been involved in the malpractice. They were disciplined promptly. Therefore, A was opted.

### Individual and Consensus Ranking by the Expert Panel Members on Public Provision of Land Information

Ranking Information						
LGI	Dimension Description	Ranking by Expert Panel Members			Consensus Ranking	
		1	2	3		
2	iv	Women’s rights are recognized in practice by the formal system	C	C	C	C
3	iii	First-time registration on demand is not restricted by inability to pay the formal fees	B	B	B	B
3	iv	First-time registration does not entail significant informal fees	B	B	B	B
16	i	Mapping of registry records	B	B	B	B
16	ii	Economically relevant private encumbrances are recorded	A	A	A	A
16	iii	Economically relevant public restrictions or charges are recorded	A	A	A	A
16	iv	Searchability of the registry	A	A	A	A
16	v	Accessibility of records in the registry	B	B	B	B
16	vi	Timely response to a request for access to records in the registry	B	B	B	B
17	i	Focus on customer satisfaction in the registry	B	D	D	B/D
17	iii	Registry/ cadastre information is up-to-date	C	C	C	C
18	i	Cost of registering a property transfer	D	D	D	D
18	ii	Financial sustainability of the registry	D	D	D	D
18	iii	Capital investment	D	D	D	D
19	i	Schedule of fees is available publicly	B	B	B	B
19	ii	Informal payments discouraged	D	D	D	D

**Aide Memoire of the Expert Panel Workshop on Dispute Resolution**  
**Venue: Reserve Bank club, Area 47, Lilongwe on November 1, 2011**

**1.0 Introduction**

The Land Governance Assessment Framework (LGAF) is a diagnostic tool designed to identify areas where policy interventions may be needed to improve governance in the land sector. The LGAF groups land issues into five thematic areas: (i) Legal and Institutional Framework; (ii) Land Use Planning, Management and Taxation; (iii) Management of Public Lands; (iv) Public Provision of Land Information; and (v) Dispute Resolution and Conflict Management. In line with these thematic areas, 21 Land Governance Indicators (LGI) have been developed. Each of the LGIs is further broken down into a number of dimensions ranging from 2 to 6. Thus, the LGAF study is based on the assessment of 80 dimensions.

A core strategy for the implementation of the LGAF is the setting up of Expert Panels of 3-5 members to carry out both individual and consensus assessments of a number of given dimensions in a day's workshop. The expert panel on dispute resolution is one of the eight LGAF Expert Panels to assess LGAF dimensions. The three Expert Panel Members (EPMs) among those invited attended the panel session. They were: (i) Mr. Marshal Chilenga, a private legal practitioner and a Commissioner for Malawi Human Rights Commission; (ii) Mr. M.D.A. Kadammanja, District Commissioner for Ntcheu District and (iii) Senior Chief Makwangwala, a traditional authority from Ntcheu District. Also present was Mr. Francis Mukhupa, an Economist in the Planning department of Ministry of Lands, Housing and Urban Development.

The workshop was facilitated by the Country Coordinator and involved two stages. During the first session, the CC introduced the LGAF Study to the EPMs and explained the objective of the Panel Workshop. This was followed by a brief description of each of the 7 dimensions and the procedure to be followed in their assessment. The Panel members were then given time to go through the dimensions and do individual scoring. The rankings by the individual members were collected and recorded on one scoring sheet (see Annex A). The second session was devoted to the collective discussion and consensus assessment of each dimension as well as providing possible policy/research/reform suggestions. At the start of assessing each dimension, the range of ranking earlier submitted was revealed by each member including the reasons for choosing that score. Thereafter interactive discussion followed to gain consensus where possible.

**2.0 Assessment and Discussions of the Dimensions**

**2.1 Accessibility of conflict resolution mechanisms [LGI 20 (i)]**

The options available for this dimension were:

- A. Institutions for providing a first instance of conflict resolution are accessible at the local level in the majority of communities.

- B. Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized.
- C. Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities, and where these are not available informal institutions do not exist or cannot perform this function that is locally recognized.
- D. Less than a quarter of communities have institutions formally empowered to resolve conflicts and a variety of informal institutions may be available in the rest.

The panel members in their individual assessment of this dimension chose between A and B, with one of the panel members choosing A and two choosing B. In their discussions they noted the following:

- There is clear system for dispute resolution from community level starting from village chief to Traditional Authority, then to district councils and thereafter to the courts (magistrate or high court).
- There are platforms or initiatives for accessing justice which include chief's coucillors and primary justice forums being promoted in a number of districts.
- With traditional leaders, people are able to access primary justice. This is recognized in the Chiefs Act.

Following discussions, B score was chosen as a consensus score. Option B states that "institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized". There policy recommendation was that there was need to improve systems of recording cases at all levels for information sharing and reference.

## **2.2 Informal or community based dispute resolution [LGI 20 (ii)]**

The options available for this dimension included:

- A. There is an informal or community-based system that resolves disputes in an equitable manner and decisions made by this system have some recognition in the formal judicial or administrative dispute resolution system.
- B. There is an informal or community-based system that resolves disputes in an equitable manner but decisions made by this system have little or no recognition in the formal judicial or administrative dispute resolution system.
- C. 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.

- D. There is an informal system or community-based that makes decisions that are not always equitable but have recognition in the formal judicial or administrative dispute resolution system.

In their individual assessment two panel members chose C while one chose B. They noted that there are informal systems through the traditional leadership under the customary systems. However, in many cases the judicial people in formal courts tend to challenge decisions of traditional leaders on conflicts as lacking legal basis when brought to court. The panelists also noted that decisions of traditional leaders under customary law can be influenced or based on personal relationships.

Option C which states that ‘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’ was chosen as a consensus score.

They noted that there is need to reconcile customary law and written laws so that they can interrelate and be harmonized.

### **2.3 Forum shopping [LGI 20 (iii)]**

The options available for this dimension were as follows:

- A. There are no parallel avenues for conflict resolution or, if parallel avenues exist, responsibilities are clearly assigned and widely known and explicit rules for shifting from one to the other are in place to minimize the scope for forum shopping.
- B. There are parallel avenues for dispute resolution but cases cannot be pursued in parallel through different channels and evidence and rulings may be shared between institutions so as to minimize the scope for forum shopping.
- C. There are parallel avenues for dispute resolution and cases can be pursued in parallel through different channels but sharing of evidence and rulings may occur on an ad-hoc basis.
- D. There are parallel avenues for dispute resolution and cases can be pursued in parallel through different channels and there is no sharing of information.

One panel member opted for D because he felt that cases can be taken to different systems at the same time such as the traditional leaders, the magistrate court or high court. The other two panelists converged on C indicating that there are some avenues for sharing information and evidence at different levels although the sharing is often ad-hoc and not systematic. Following discussions, they agreed that C is closer to the situation in Malawi.

### **2.4 Possibility of Appeals [LGI 20 (iv)]**

This dimension provided the following options:

- A. A process exists to appeal rulings on land cases at reasonable cost with disputes resolved in a timely manner.
- B. A process exists to appeal rulings on land cases at high cost with disputes resolved in a timely manner.
- C. A process exists to appeal rulings on land cases but costs are high and the process takes a long time.
- D. A process does not exist to appeal rulings on land cases.

Option C which states that ‘a process exists to appeal rulings on land cases but costs are high and the process takes a long time’ was chosen by two panel members in their individual assessment of the dimension. They felt that a process exists from lower level but they noted that land related cases most of the time take too long and may sometimes be never concluded. One panel member chose B because he felt that process of appeal is time consuming and high costs are incurred by the appellant.

After deliberations, option C was chosen as a consensus. They recommended that there is need for local land tribunals to specifically deal with land disputes. This is proposed in the draft land bill to amend the current land law which is awaiting parliament approval. They noted the delays in passing the new land law.

## **2.5 Conflict resolution in the formal legal system [LGI 21 (i)]**

The options available for this dimension were as follows:

- A. Land disputes in the formal court system are less than 10% of the total court cases.
- B. Land disputes in the formal court system are between 10% and 30% of the total court cases.
- C. Land disputes in the formal court system are between 30% and 50% of the total court cases.
- D. Land disputes in the formal court system are more than 50% of the total court cases.

Two panelists chose option B in their individual assessment of this dimension while one panelist chose D. the one who chose D indicated that due to increasing population, land conflicts are increasing especially in the rural areas. In their discussions, they noted that in rural areas the most common and increasing cases relate to inheritance/family disputes followed by boundary/trespass disputes. They also noted that 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. The panelist could not give figures due to lack of

information. However their consensus option was B, which states that “land disputes in the formal court system are between 10% and 30% of the total court cases.” They reiterated the need to for local land tribunals to deal with increasing cases of land disputes.

## **2.6 Speed of conflict resolution in the formal system [LGI 21 (ii)]**

This dimension had the following options:

- A. A decision in a land-related conflict is reached in the first instance court within 1 year for more than 90% of cases.
- B. A decision in a land-related conflict is reached in the first instance court within 1 year for between 70% and 90% of cases.
- C. A decision in a land-related conflict is reached in the first instance court within 1 year for between 50% and 70% of cases.
- D. A decision in a land-related conflict is reached in the first instance court within 1 year for less than 50% of cases.

All the panel members in their individual assessment of this dimension chose Option D which states that “a decision in a land-related conflict is reached in the first instance court within 1 year for less than 50% of cases”.

They noted that in most cases land cases take long to deal with at all levels due to many reasons including the search for credible evidence and having many interest holders. They highlighted the following recommendations:

- The need to establish land tribunals to deal with only land cases to reduce the time
- The need to improve on information management at the land registry to improve access to information and reduce alleged fraud at the registry. This improvement may involve computerization of the registry and adding photos to title deeds. They commended the efforts being initiated through the BESTAP project with support from Land Equity International (funded by World Bank) to modernize the registry.

## **2.7 Long-standing conflicts (unresolved cases older than 5 years) [LGI 21 (iii)]**

The options for this dimension were as follows:

- A. The share of long-standing land conflicts is less than 5% of the total pending land dispute court cases.
- B. The share of long-standing land conflicts is between 5% and 10% of the total pending land dispute court cases.
- C. The share of long-standing land conflicts is between 10% and 20% of the total pending land dispute court cases.
- D. The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases.



Two panel members in their individual assessment of this dimension chose the same option C while one member settled for D. Based on experience of the available legal practitioner in the panel, option C was considered to be closer to reality in Malawi.

They highlighted the following action areas as provided for in the draft amended land bill:

- The need to establish proper and functional local land boards to properly administer land to reduce land disputes.
- The need for local land tribunals to deal with land disputes.

### Individual and Consensus Ranking by the Expert Panel Members on Dispute Resolution

LGI	Dimension Description	Ranking by Expert Panel Members			Consensus Ranking
		1	2	3	
20 i	Accessibility of conflict resolution mechanisms	B	B	A	B
20 ii	Informal or community based dispute resolution	B	C	C	C
20 iii	Forum shopping	D	C	C	C
20 iv	Possibility of appeals	C	B	C	C
21 i	Conflict resolution in the formal legal system	B	B	D	B
21 ii	Speed of conflict resolution in the formal system	D	D	D	D
21 iii	Long-standing conflicts (unresolved cases older than 5 years)	D	C	C	C

### Annex 3: Country scorecard summarizing LGI rankings

#### Country Scorecard for Malawi – Core set of indicators

LGI-Dim	Topic	Score				
		A	B	C	D	
Recognition of Rights						
1	i	Land tenure rights recognition (rural)				
1	ii	Land tenure rights recognition (urban)				
1	iii	Rural group rights recognition				
1	iv	Urban group rights recognition in informal areas				
1	v	Opportunities for tenure individualization				
Enforcement of Rights						
2	i	Surveying/mapping and registration of claims on communal or indigenous land				
2	ii	Registration of individually held properties in rural areas				
2	iii	Registration of individually held properties in urban areas				
2	iv	Women’s rights are recognized in practice by the formal system (urban/rural)				
2	v	Condominium regime that provides for appropriate management of common property				
2	vi	Compensation due to land use changes				
Mechanisms for Recognition						
3	i	Use of non-documentary forms of evidence to recognize rights				
3	ii	Formal recognition of long-term, unchallenged possession				
3	iii	First-time registration on demand is not restricted by inability to pay formal fees				
3	iv	First-time registration does not entail significant informal fees				
3	v	Formalization of residential housing is feasible and affordable				
3	vi	Efficient and transparent process to formally recognize long-term unchallenged possession				
Restrictions on Rights						
4	i	Restrictions regarding urban land use, ownership and transferability				
4	ii	Restrictions regarding rural land use, ownership and transferability				
Clarity of Mandates						
5	i	Separation of institutional roles				
5	ii	Institutional overlap				
5	iii	Administrative overlap				

LGI-Dim		Topic	Score			
			A	B	C	D
5	iv	Information sharing				
<b>Equity and Non-Discrimination</b>						
6	i	Clear land policy developed in a participatory manner				
6	ii	Meaningful incorporation of equity goals				
6	iii	Policy for implementation is costed, matched with the benefits and is adequately resourced				
6	iv	Regular and public reports indicating progress in policy implementation				
<b>Transparency of Land Use</b>						
7	i	In urban areas, land use plans and changes to these are based on public input				
7	ii	In rural areas, land use plans and changes to these are based on public input				
7	iii	Public capture of benefits arising from changes in permitted land use				
7	iv	Speed of land use change				
<b>Efficiency of Land Use Planning</b>						
8	i	Process for planned urban development in the largest city				
8	ii	Process for planned urban development in the 4 largest cities (exc. largest)				
8	iii	Ability of urban planning to cope with urban growth				
8	iv	Plot size adherence				
8	v	Use plans for specific land classes (forest, pastures etc) are in line with use				
<b>Speed and Predictability</b>						
9	i	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner.				
9	ii	Time required to obtain a building permit for a residential dwelling				
<b>Transparency of Valuation</b>						
10	i	Clear process of property valuation				
10	ii	Public availability of valuation rolls				
<b>Tax Collection Efficiency</b>						
11	i	Exemptions from property taxes are justified				
11	ii	Property holders liable to pay property tax are listed on the tax roll				
11	iii	Assessed property taxes are collected				
11	iv	Property taxes correspondence to costs of collection				
<b>Identification of PublicLand</b>						
12	i	Public land ownership is justified and implemented at the appropriate level of government				
12	ii	Complete recording of publicly held land				
12	iii	Assignment of management responsibility for public land				

LGI-Dim		Topic	Score			
			A	B	C	D
12	iv	Resources available to comply with responsibilities				
12	v	Inventory of public land is accessible to the public				
12	vi	Key information on land concessions is accessible to the public.				
<b>Incidence of Expropriation</b>						
13	i	Transfer of expropriated land to private interests				
13	ii	Speed of use of expropriated land				
<b>Transparency of Procedures</b>						
14	i	Compensation for expropriation of ownership				
14	ii	Compensation for expropriation of all rights				
14	iii	Promptness of compensation				
14	iv	Independent and accessible avenues for appeal against expropriation				
14	v	Appealing expropriation is time-bounded				
<b>Transparent Processes</b>						
15	i	Openness of public land transactions				
15	ii	Collection of payments for public leases				
15	iii	Modalities of lease or sale of public land				
<b>Completeness of Registry</b>						
16	i	Mapping of registry records				
16	ii	Economically relevant private encumbrances				
16	iii	Economically relevant public restrictions or charges				
16	iv	Searchability of the registry (or organization with information on land rights)				
16	v	Accessibility of records in the registry (or organization with information on land rights)				
16	vi	Timely response to a request for access to records in the registry (or organization with information on land rights)				
<b>Reliability of Records</b>						
17	i	Focus on customer satisfaction in the registry				
17	ii	Registry/ cadastre information is up-to-date				
<b>Cost Effective and Sustainable</b>						
18	i	Cost of registering a property transfer				
18	ii	Financial sustainability of the registry				
18	iii	Capital investment				
<b>Transparency</b>						
19	i	Schedule of fees is available publicly				
19	ii	Informal payments discouraged				
<b>Assignment of Responsibility</b>						
20	i	Accessibility of conflict resolution mechanisms				
20	ii	Informal or community based dispute resolution				
20	iii	Forum shopping				

LGI-Dim			Score			
			A	B	C	D
20	iv	Possibility of appeals				
<b>Low Level of Pending Conflicts</b>						
21	i	Conflict resolution in the formal legal system				
21	ii	Speed of conflict resolution in the formal system				
21	iii	Long-standing conflicts (unresolved cases older than 5 year)				

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**Some land related Laws referred to:**

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

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<sup>i</sup>There are basically three land tenure types in Malawi: customary, public and private (i.e., lease or freehold) as identified in the Land Act (Cap 57:01) of 1965.