



Issues and Options for Improved Land Sector Governance in Malawi



Results of the Application
of the Land Governance
Assessment Framework

Synthesis Report
August 2013
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1 Introduction

Malawi currently faces a number of land governance challenges. In general, dysfunctional land policies and institutions have been an obstacle to proper land use, investment in agriculture, private sector development, gender equality, and good governance. A lack of collaboration between institutions and the presence of vested political interests have long prevented progress. Insecurity over rights, absence of low-cost mechanisms for registration, and a non-functioning land administration system block private sector development and the development of financial services. Though more than 25% of households are female headed, less than 15% of land is registered in the name of women, either individually or jointly. Land use planning is mostly absent, despite its growing importance for living conditions in fast growing cities, where informal settlements are spreading.

In order to evaluate and prioritize these issues more systematically, country experts and the Malawi Government utilized the Land Governance Assessment Framework (LGAF) developed by the World Bank and its partners. This chapter synthesizes and summarizes the key findings of the LGAF process in Malawi and outlines proposals for moving forward. The next section explains the methodology of the LGAF, while the third section provides background information on Malawi and key issues in its land governance. The fourth section presents the results of the LGAF panel discussions and validation meetings. Part five offers recommendations for prioritizing land policy improvements, and the final section concludes.

2 LGAF Methodology

The LGAF is a diagnostic tool that is implemented in a collaborative manner at the local level in order to benchmark land governance. This process helps to establish a consensus and priority actions on (i) gaps in existing evidence; (ii) areas for regulatory or institutional change, piloting of new approaches, and interventions to improve land governance on a broader scale; and (iii) criteria to assess the effectiveness of these measures. LGAF helps put in place a structure and process to systematically track progress in improving land governance over time.

The core version of the LGAF consists of 21 Land Governance Indicators (LGIs) covering 80 dimensions of land governance, grouped into five broad thematic areas:

1. Legal and institutional framework (LGI 1-6)
2. Land use planning, management, and taxation (LGI 7-11)
3. Management of public land (LGI 12-15)
4. Public provision of land information (LGI 16-19)
5. Dispute resolution and conflict management (LGI 20-21)

Each LGAF dimension is rated on a scale from A to D, with scoring options based on international best practice.

The LGAF process was conducted from April 2011 to July 2012, and was facilitated by a Country Coordinator (Paul Jere) in collaboration with Ministry of Lands, Housing, & Urban Development (MLHUD), and with technical support from the World Bank. 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. The LGAF team then conducted seven one-day panels covering the thematic areas and subtopics with 3 to 5 experts. A total of 28 experts from the public and private sectors took part in the panels. Panel members were asked for their own preliminary ratings for the LGIs, which were then discussed until the panel achieved consensus in the scoring of each dimension. To allow broader stakeholder engagement, the MLHUD organized a technical validation workshop, followed by a policy dialogue workshop in July 2012, which were attended by more than 100 people. At the end of the meeting, a working group was established to take forward the discussions forwards and seek to implement the policy recommendations that were endorsed.

3 Overview of Land Policy Issues in Malawi

3.1 Malawi: Background Information

3.1.1 *Economy and geography*

Malawi is a small landlocked country of 118,484 sq km, running from the Tanzanian border in the north southwards to Mozambique. Land comprises approximately 78% of the country's area, while bodies of water, including Lake Malawi, cover the rest. Approximately 80% of Malawi's 13.1 million population lives in rural areas.¹ Approximately 39% of the population lives below the poverty line, and most households are unable to meet their food requirements.

Land is a key asset for economic growth and development in Malawi. The economy continues to rely heavily on agriculture and natural resources for a significant share of GDP (>40%), national food needs, employment, and export revenue. The major export products (tobacco, tea, and sugar) are produced on estates, which are often situated in prime arable or urban land and are generally controlled by non-indigenous Malawians or companies.

95% of Malawi's population is involved in subsistence agriculture. Per capita arable land holdings have declined from about 0.4 hectares in 1970 to about 0.2 hectares in 2007. This is partly due to a high population growth rate, which has led to intergenerational fragmentation of land holdings. At 139 people per square kilometer, Malawi has one of the highest population densities in sub-Saharan Africa, especially marked in the southern region. At the same time, urbanization is accelerating, with rates standing at 5% per year. This has resulted in additional challenges for the country, including the spread of informal settlements, waste disposal issues, deforestation, air pollution, and strains on infrastructure, amongst other problems.

3.1.2 *Governance system*

Malawi is a multi-party democratic republic, headed by a popularly elected president and a 193-member National Assembly. The judicial branch follows the English model, with magisterial courts, a High Court, and a Supreme Court of Appeal. The country is divided into three regions (Northern, Central, and Southern), which are further sub-divided into 28 districts. Regional administrators and district commissioners are appointed by the central government, although local government elections were held in 2000. (Subsequent local elections were cancelled.)

¹ National Statistical Office 2008.

3.2 Land Issues and Land Policy

3.2.1 Tenure typology

According to the law three types of tenure exist: public land, private land and customary land.

Tenure type	Area	Population	Legal recognition & characteristics	Registration	Transferability
Public / Govt land	2 million ha (20% of total land area)		Land Act	Government	To communities or individuals
Customary	65% of total land area, of which 82% is suitable for farming	11,082,861	Land Act	No recording & registration system	Individuals (men, women) belonging to lineage have rights of access & can transfer to designated heirs
Private	10-15% total land area		Land Act, Registered Land Act	Freehold or leasehold	
- Freehold ²	Mostly estates, 13% total land, 1,180,000 ha of which 51% is cultivated and 19% unsuitable			Designated & registered	Mostly held by corporate entities; sale or transfer needs notice of Minister
- Leasehold ³		28% of rural population		Records available; annual ground rents payable to Lands Dept	Inheritable & transferable; sale requires prior notification by Minister
- Urban leasehold by assemblies & government agencies	120,000 ha ⁴ (1% of total land area)	1,946,637		Records available	Inheritable & transferable; sale requires prior notification by Minister

Customary land is the largest category and concerns 80% of rural land. There is also some customary land in urban areas. Rights to customary land are vested in the president, in trust for the people of Malawi. However, *de facto* jurisdiction over customary land lies with traditional authorities, who aim to preserve the identity and asset base of the community or family for current and future generations. Traditional authorities can designate customary land as ‘public’ for common access (grazings, wetlands, forests, and graveyards).⁵ Some traditional authorities have started to map the boundaries of the land under their jurisdiction.

² 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).

³ 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).

⁴ 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.

⁵ Otsuka, 1997

Customary land may be assigned to a lineage, family, or individual, and the rights can be transferred to heirs. Kinship is thus the basic means of acquiring land under customary tenure; access to land is primarily through inheritance (52%) and marriage (18%), with the systems varying between matrilineal and patrilineal systems.⁶ Additional routes to access land for smallholders include allocations from traditional leaders (20%), land leasing or government resettlement programs (9%), and land purchase (1%). There is an emerging market for rural customary land. Land is sold following individual negotiations, with prices largely reflecting supply and demand.

The government has the legal power to convert customary land into private leasehold or public land. At independence, for example, lands under customary tenure were converted by the government to freehold land, in an effort to encourage agricultural development. Customary land may become private land following formal registration. Likewise, customary land may become public if it is designated for nature reserves, public roads, public institutions, the national railway line, or historic and cultural sites. Similarly, if an area is declared a planning area, the status of the land changes from customary to public.

Public land is owned and used by the government, and also includes public land that is leased to individuals, companies, and institutions for which ground rent is paid to government. The majority of public land is used for forest reserves, national parks, and game reserve (estimated at over 1.7 million ha). Public lands are used also for schools, hospitals, and other government structures, service centers, and roads (10,355 ha). Public land may be created through the surrender, termination, or falling-in of any freehold or leasehold and by changing the status of customary land, as indicated above. Direct transactions between local people and investors are generally not permitted without expropriation occurring first. Public land located in irrigation schemes and forested areas were transferred to communities for use and management, but this land remains under government custodianship. Still, the unauthorised transfer of public land does take place. For example, wetlands (*dambos*) are now sold or rented out in rural areas.

Private land may be owned, held, or occupied under freehold title, leasehold, or a certificate of claim and registered under the Registered Land Act of 1967. The estates in Malawi are under freehold and leasehold. Legally, leasehold land tenure can be provided for all three land categories, and the law empowers the minister responsible for land affairs to issue leases on behalf of the government.

3.2.2 History and current status of land policies

Land rights were vested in kingdoms before Malawi came under British rule (1891-1964). Under the colonial land policy, all land was assigned to the British sovereign, and access to land under private title for the arriving settler community was granted based on the English law on land management. In 1951, a Land Ordinance was passed to formalise land tenure regimes “created by treaty, convention, agreement or conquest,” which defined land as customary, private, and public. Customary land was construed as a type of “public land,”

⁶ 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.

with “natives” granted occupation rights only. The result was that indigenous communities lost ownership and control over their land, and were evicted from areas where settlers had started their estates. 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.”

After independence in 1964, the current Land Act came into force in 1965 (Cap 57:01). This act did not change the status and insecurity of customary land rights, and it maintained the three land categories of the Ordinance. The president of Malawi became the custodian/trustee of all public land. The passage of the Registered Land Act (Cap 58:01), the Customary Land (Development) Act (Cap 59:01), and the Local Land Boards Act (Cap 59:02) in 1967 was a “first serious attempt to provide a comprehensive body of land law in Malawi.” These Acts made provisions for demarcating and registering customary “family land” rights to individual proprietors, but had limited geographical application.

As the competition over land and natural resources grew, a Presidential Commission of Inquiry into land policy reform was appointed in 1996 and tasked with developing a national land policy that would promote equitable access to land, security of title to land, and improved land administration.⁷ The process started with a series of background studies that analysed the status of land matters for all tenure types and provided the empirical and analytical bases for policy reforms.⁸ It should be noted that no further comprehensive studies have been undertaken since 2002.

Thereafter, the MLHUD led an extensive consultative process to help build consensus among key stakeholders (including traditional leaders and civil society groups), to test acceptability of the policy proposals as they were being formulated, and to establish public confidence in the formulation process and thus enhance its chances of implementation. This approach was also critical for establishing synergies with other land sector agency policies and for ensuring the consideration of crosscutting issues.

The National Land Policy came into effect in January 2002 with the goals of ensuring tenure security and equitable access to land and facilitating the attainment of social harmony and broad based social and economic development through optimum and ecologically balanced use of land and land-based resources.⁹ However, full implementation of the policy required the development of a new legal framework, and in 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 and submitted to government in 2009. The bill covers the essential elements of statutory and customary land ownership, registration, surveying, and dispute resolution. However, implementation has lagged as the president has not approved the bill as law. Therefore, although a comprehensive land policy exists, the policy cannot be enforced until a revised land law is enacted.

After the adoption of the National Land Policy in 2002, the government prepared a land reform implementation program, which was costed and time bound. However, this program was not implemented fully due to lack of supporting legislation for some provisions of the policy. Aspects of the land policy have been included in the program and costings of the

⁷ Kandodo 2001

⁸ The MLHUD was assisted by a consortium of donors (World Bank, DANIDA, DIFD, EU, FAO, and USAID) in the preparation of these background studies.

⁹ Government of Malawi 2002.

Malawi Growth and Development Strategy, but they have not been given prominence and adequate resources since land is not one of the key priority sectors.

Preparing for the implementation of the new land bill: piloting land redistribution

To prepare the ground for the implementation of the sections on land redistribution in the new land Bill, in 2005 a pilot project was set up by the MLHUD with a US\$27 million grant from the World Bank. This “Community Based Rural Land Development” was implemented in six districts in the southern region, with the aim of relieving land pressure through the resettlement of 15,000 poor landless or land-constrained farmers. Resettled farmers were given support for improving agricultural productivity (advisory services and basic inputs). The project also provided funding to develop the capacity of district-level land registries, surveying, and registration services and assisting the government with the enactment of a new land law.

The pilot project tested the “willing buyer/ willing seller” approach, with the community in the lead on the acquisition of lands. 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 the land purchase and initial investment and start-up costs. Each beneficiary household was allocated an average of 2.2 hectares. The project had a positive impact on agricultural productivity, food security, and income, because families had a larger area of land and were able to invest in the land.

3.2.3 Land management institutions

A large number of public institutions and statutory agencies deal with land matters. The MLHUD is responsible for policy formulation and implementation of the National Land Policy and associated legislative instruments relating to land administration. This Ministry comprises of a range of technical departments with different responsibilities, such as Policy & Planning, Land Administration, Physical Planning, Surveying, Housing, and Urban Development. All these departments are guided by the National Land Policy, but some also have separate policies and legal frameworks that govern their work.

Other government ministries and agencies also play a role in land administration within the confines of their sector policies and mandates. The Ministry of Agriculture, Irrigation, and Water Development is primarily responsible for agriculture land and harnessing water resources, while the Ministry of Natural Resources, Energy, and Environment manages forest resources and fisheries and enforces environmental regulations. The Ministry of Transport and Public Works and the Ministry of Tourism, Parks, and Wildlife likewise maintain interests in public land related to their mandates.

Local authorities – i.e. city, municipal, town, and district councils – are responsible for implementing land policies within their jurisdictions. They are the planning authorities in the major cities, and as such are responsible for the enforcement of planning controls. Although the MLHUD has the ultimate authority over the transfer of interest in land, local authorities and the Malawi Housing Corporation are involved to some extent in land transactions for land belonging to them.

4 Assessment of Land Governance in Malawi

4.1 Legal and institutional framework

4.1.1 Continuum of rights

Recognition of a Continuum of Rights						
LGI	#	Indicator	A	B	C	D
1	i	Land tenure rights recognition in rural areas		■		
1	ii	Land tenure rights recognition in urban areas			■	
1	iii	Rural group rights recognition			■	
1	iv	Urban group rights recognition in informal areas			■	
1	v	Opportunities for tenure individualization			■	

Under Malawi's current legal system, the customary tenure system is legally recognized but individual parcels are not officially recorded and registered. The LGAF panel estimated that the existing legal framework recognizes rights held by 70-90% of the rural population, either through customary or statutory tenure regimes. Since customary tenure is governed by customary law (which varies across locations), the challenge lies with having various land administration systems. At the community level, traditional leaders and members keep mental records of land and these rights are to a large extent enforceable through the traditional system. Still, despite their extent and legitimacy, customary systems of tenure are under strain from demographic pressure, land scarcity and competition, growing urbanisation, inter-group and wider civil conflicts, breakdowns in customary authority, and pluralistic systems of law.

With respect to rural groups' rights, 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 systems that cannot prevent the privatization of common lands including fraudulent disposal of customary land by traditional chiefs and government officials. The New Land Policy proposes a greater administrative role for chiefs in land governance and dispute resolution, but as a result of current developments, there are community members who express dissatisfaction and would prefer a leading role for land tribunals.

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 the legal framework for urban land rights. In urban areas, local councils and government agencies such as the MLHUD and the Malawi Housing Corporation allocate plots in areas within their jurisdiction. The LGAF panel determined that Malawi's legal framework recognizes rights held by 50-70% of the urban population, either through customary or statutory tenure regimes. Full legal recognition of urban land tenure is hampered by obstacles such as rapid urbanization, the requirements of formal title registration, and the high cost of legal fees for formalization. As a result, there has been a proliferation of informal settlements and under-served neighborhoods, typically settled by squatters without legal recognition or rights in high-risk sites. It is estimated that almost 67% of the urban population live in informal areas.

In the 1980s, Malawi had a strong system for the provision of affordable urban housing under the Traditional Housing Areas (THAs), which were established to address the issue of squatting and unplanned settlements by broadening formally recognised property access, and

realising the social and economic benefits that flow from such property like access to mortgages. Through this intervention, the Government of Malawi was able to produce many plots cheaply and quickly. Additionally, the program used an incremental approach towards upgrading the quality of housing. Building and public health standards were kept to the basic minimum so that low-income plot holders could start building their houses with local, cheaper materials. When the new house owners' financial position had improved, they started improving their dwellings themselves.¹⁰ Initially, the THAs managed to keep pace with the growth of the low income population in urban areas, especially in the city of Blantyre. However, over time city assemblies have been incapable of administering or expanding THAs, and informal settlements have continued to expand.

The LGAF panel assessed that when desirable, the law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land ownership/use. The Customary Land (Development) Act empowers the Minister of Lands and Housing to allow for the demarcation and recording of rights and interests in customary land for ascertainment of rights and for agricultural development. This Act was only applied in the Lilongwe Agricultural Development Area. The law also provides opportunities for individualizing customary land into leasehold estate under the Registered Land Act. However, process is not clear, leading to widespread discretion or failure to apply even for cases where those affected desire to so. It is also not affordable for the poor, especially due to surveying requirements.

4.1.2 Enforcement of rights

Enforcement of Rights						
LGI	#	Indicator	A	B	C	D
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				

The LGAF process confirmed the assessment that less than 10% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered. Traditional Authority areas and village boundaries are only known by the owners using natural features such as rivers, trees, roads, rocks and hills. In rural areas, only estates under leasehold tenure have boundaries that are clearly demarcated and registered.

The LGAF panel estimated that less than 50% of individual properties in rural areas are formally registered. In urban areas, the figure is between 20-70%. The majority of individual properties in rural areas are under customary tenure and are not formally registered. Lilongwe West is an exception because it was designated for the implementation of the Customary Land (Development) Act. The land in this area is registered to family representatives on

¹⁰ Graham, 2009

behalf of family groups with freehold status. Due to high illiteracy rates, most rural communities are not aware of the provisions of the law and procedures for registering property. The costs involved are also unaffordable for most rural communities.

The Constitution of Malawi prohibits gender discrimination, and under Malawi's formal land laws, both 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.¹¹ The LGAF panel determined that in Malawi, less than 15% of land registered to physical persons is registered in the name of women either individually or jointly. In general, women-headed households possess smaller landholdings than their male counterparts. Tenure security is weakest for women in patrilineal societies, as widows are vulnerable to property-grabbing by their husband's relatives.¹² Studies indicate that women's land rights are becoming increasingly precarious, even among matrilineal societies.¹³ Women's rights are becoming increasingly marginalized, not only in the informal family and lineage negotiations over rights and access to land, but also in the bargaining processes for the implementation of land reform policies and programs.¹⁴

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. Many consulted experts consider a condominium law very necessary in Malawi, and the Special Law Commission that reviewed land-related laws recommended that the country come up with a clear condominium law to guide management of common property, given increases in the development of apartments in cities.

The LGAF panel noted 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. 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 render it difficult for people to acquire comparable assets due to changes in market price. Thus, while section 28 of the Land Act provides for compensation to any person who suffers any disturbance, loss, or damage as a result of land use changes, in practice people do not receive adequate compensation.

¹¹ Ngwira 2003

¹² Ngwira 2003

¹³ Ferguson & Mulwafu 2005

¹⁴ Holden & Lunduka 2006

4.1.3 Mechanisms for recognition of rights

Mechanisms for Recognition of Rights						
LGI	#	Indicator	A	B	C	D
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				

For customary land, non-documentary forms of evidence are used also 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, which have about the same strength as the provided documents.

Most occupants of THAs have only certificates of occupancy. For example, of the 19,222 plots in the THAs of Blantyre, 595 have leases, while 18,627 are held under occupancy certificates. Elsewhere in urban areas, a practical process exists for the formal recognition of possession, provided that the plot is located in an area zoned as residential. An individual in an unplanned settlement cannot initiate the process of formalization until the area in question is subject to an officially sponsored upgrading programme.

The high cost of registration and property taxes discourage people in Malawi from registering their properties. Those wishing to obtain a formal leasehold title are required to pay K10,000 (66.7 USD) in application fees. In addition, a cadastral survey fee of approximately K40,000 (267 USD) and a development charge of at least 300 USD must be paid. Lawyers are bound to levy a 1% scaled charge on the value of the transaction for drafting mortgage/lease/transfer documents and a 2% charge for negotiating the transaction. Since documentation is fairly standard for these transactions, such charges are excessive and need to be revisited.

There are informal fees that need to be paid to effect first time registration, but the level of informal fees is significantly less than the formal fees. Informal costs include transport costs and other unplanned costs such as accommodation when one has to travel and spend a night in Lilongwe or Blantyre to process his/her transaction at the registry. There may also be informal fees paid to speed up registration processes.

Current land legislation has provisions to formally recognize long-term, unchallenged possession, but this applies only to private land. The Land Act provides for prescriptive rights to be given after 12 years of uninterrupted and unchallenged occupation. However, the LGAF panel noted that the process is not always implemented effectively, consistently, and transparently. Moreover, these provisions are not applicable to customary land, where individuals have only usufructuary rights as the land belongs to families and is in the custodianship of the chiefs.

4.1.4 Restrictions on rights

Restrictions on Rights						
LGI	#	Indicator	A	B	C	D
4	i	Restrictions on urban land use, ownership, and transferability		■		
4	ii	Restrictions on rural land use, ownership, and transferability		■		

The LGAF panel noted that land use regulations are for the most part justified on the basis of overall public interest, but they are often not enforced. Restrictions include land transactions, land ownership, owner type, and land use. There are also restrictions on foreigners owning land and the type of buildings in certain zones. However, restrictions on the size of holdings and prices do not exist. In THAs, there are restrictions on plot transfers and plot sizes, but these restrictions tend to promote corruption. For example, THAs operate under a “one person – one plot” restriction, but people have bribed officials to get more than one plot.

Similarly, there are top-down restrictions on land transactions, land ownership, and ownership types in rural areas. However, enforcement remains weak. Moreover, restrictions that do not take into consideration the livelihoods of rural communities are often resisted and are therefore difficult to enforce, such as a restriction on encroachment in the Thyolo mountain forest area. There are also unwritten local restrictions within customary land tenure, e.g. cutting down of trees in graveyards.

4.1.5 Clarity of institutional mandates

Clarity of Mandates						
LGI	#	Indicator	A	B	C	D
5	i	Separation of policy formulation, implementation, arbitration roles			■	
5	ii	Differentiated mandates across institutions			■	
5	iii	Differentiated responsibilities across levels of government		■		
5	iv	Information sharing across institutions			■	

The roles of policy formulation and implementation have not been separated, with the MLHUD largely responsible for both. In addition, overlaps in policies, mandates, and jurisdictions persist among and between levels of government. Both ministries and local governments bear responsibilities for customary land, and town councils and district councils sometimes conflict over the boundaries of traditional areas. Urban municipalities and agencies such as the Malawi Housing Corporation both allocate and manage plots for housing. In general, though, the Decentralization Policy clearly spells out responsibilities from the central government to local authorities and down to community levels.

At the national level, frequent reshuffling and restructuring of responsibilities of the ministries can produce confusion and conflict. Moreover, officers sometimes provide services that are contradictory or not within their mandates (e.g. allocating plots in contravention of layout plans; plot boundaries crossing rivers). There is a clear need for better coordination across ministries. For example, the management of forests that are also water catchment areas involves overlaps between the ministries responsible for forestry and water, while the management and regulation of game reserves and national parks creates overlap between the ministries for wildlife and forestry. The MLHUD could help establish clear coordination mechanisms to better streamline land administration and avoid overlaps. However, this

ministry currently lacks the capacity to offer adequate and reliable advice, compounding these problems.

4.1.6 Equity and nondiscrimination

Equity and Non-Discrimination in the Decision-Making Process						
LGI	#	Indicator	A	B	C	D
6	i	Clear land policy developed in a participatory manner		■		
6	ii	Meaningful incorporation of equity goals			■	
6	iii	Cost of implementing policy is estimated, matched with benefits, and adequately resourced			■	
6	iv	Regular public reports indicating progress in policy implementation				■

The National Land Policy was the product of an extensive, highly participatory consultative process. Moreover, one of its guiding principles is to integrate the interests of vulnerable groups, such as women, children, and the disabled, which are often denied on the basis of customs and traditions. For example, the policy includes guidelines for the inheritance of real property for surviving spouses and minors. However, while the rights of indigenous people, the landless, and women are included, the rights of migrants are not clearly considered. Moreover, equity objectives are not regularly and meaningfully monitored.

With respect to reporting, there is no legal requirement that public reports be prepared to indicate progress in implementation. The only report which is supposed to be produced every 5 years by law is the state of the environment report, which includes a land chapter. The current situation is that formal land institutions report on land policy implementation only in exceptional circumstances and these reports are for internal use of the government or for exceptional demands by donors, parliament or the president. There are some reports on policy implementation, such as the Malawi Growth and Development Strategy annual review reports, as well as other district level report like the District Socioeconomic Profiles (DSEPs) and District State of the Environment Report (DSOERs).

4.2 Land use planning, taxation, and management

4.2.1 Transparency of restrictions

Transparency of Land Use						
LGI	#	Indicator	A	B	C	D
7	i	Urban land use plans and changes to these are based on public input				■
7	ii	Rural 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	■			

The Town and Country Planning Act of 1988 provides a framework for designating planning areas prior to the preparation of any land use planning schemes. Yet in rural areas, land use planning has been largely absent or has occurred on an ad hoc basis in a few cases. Without land use plans being prepared, public input cannot be sought. The Act also includes a statutory requirement that urban structure plans should be made available to the public at designated places before being finalized. In practice, public input is often not sought in

preparing urban land use plans, and public comments are for the most part overlooked in the finalization of these plans.

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. In terms of property taxes, the Minister of Lands and Housing is empowered to designate, by notice of gazette, any area that is ratable. There are, however, no criteria for the creation of a ratable area, and only 12 out of 38 local government areas have been declared ratable. Moreover, there are no mechanisms for determining and sharing or distributing benefits. In addition, since public input is not sought to bring out the demands of the community, public capture of benefits cannot be guaranteed.

The LGAF panel observed that there is variation in the speed of land use change in Malawi depending on the scale of the change. Small-scale, plot based changes (e.g. a change from a house to an office block) can be made swiftly, whereas large scale changes (e.g. revision of entire city council plans) can take more than three years to take effect. The current planning practice adequately ensures that change of land use assignment (rezoning) is done to accommodate development that is compatible with the assigned use. Yet, it is common for city and town plans to be overly generous in land allocation. As a result, land can remain vacant or used for other purposes during the planning period. For example, Area 50 (Mgona) in Lilongwe, which is supposed to be an industrial area, has now become fertile ground for squatter developments. The rate of growth anticipated by the plans did not materialize due to lack of investors with the financial capacity necessary to carry out the proposed development. Town and city plans thus need to be realistic in the allocation of land for different uses, and local authorities must fight land speculation through taxes and levies to induce faster development of property.

4.2.2 Efficiency in planning process

Efficiency of Land Use Planning						
LGI	#	Indicator	A	B	C	D
8	i	Process for planned urban development in the largest city				
8	ii	Process for planned urban development in the next 4 largest cities				
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				

Malawi's urban structure plan is used to guide spatial development in cities and towns. In general, it takes a long period of time to update such plans due to inadequate allocation of resources by planning authorities. The original urban structure plan for Lilongwe was prepared in 1986 and was due for revision in 2000; the revised plan was only completed and approved in 2011. Even with detailed layouts and planning controls, urban spatial expansion occurs in an ad hoc manner in Lilongwe, with infrastructure often provided after urban development has taken place. Since the City Planning Department of Lilongwe City Council does not have the capacity to undertake routine inspections, it is not always able to spot illegal development in time to take corrective measures.

The same applies to the next three largest cities in Malawi: Blantyre, Mzuzu, and Zomba. 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 these cities. However, actual development on the ground may deviate from approved plans. In practice, due to inadequate capacity to enforce planning controls, urban spatial expansion occurs in an ad hoc manner, with infrastructure provided some time after urbanization. Moreover, the occurrence of corrupt practices cannot be ruled out.¹⁵

Concerning urban growth, it is estimated that Lilongwe will have an additional 110,800 households by 2020. Formal housing constitutes less than 20% of total housing, implying that over 80% of city dwellers live in informal settlements. Urban planning is struggling to cope with the increasing demand for serviced units in Lilongwe, as evidenced by the fact that most new dwellings are informal. Overall, unplanned settlements are characterized by high residential density, as these areas are occupied by low income families that cannot afford to buy large plots of land to construct a house.

With many informal settlements, it is conceivable that the existing requirements for residential plot sizes are met in less than 50% of the plots. 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). Among experts in Malawi, there is general agreement that current plot sizes for low density residential areas should be reduced from 4,000 square meters to 2,000 square meters for the sustainable development of Malawi’s cities. Authorities are also encouraged to work towards meeting the demand for smaller plots (250-450 square meters) for low income earners as a way to address the problem of the proliferation of unplanned settlements.

Because of land pressure, most rural land classes (forests, pastures, wetlands) are being converted to commercial, residential, or agricultural use. New growth centres are contributing to the conversion of agricultural land to land used for developments. However, there are no accurate statistics on the scale of these conversions.

4.2.3 Speed and predictability

Speed and Predictability						
LGI	#	Indicator	A	B	C	D
9	i	Requirements for building permits are affordable/transparent				
9	ii	Time to get building permit				

The process of obtaining a building permit involves 11 separate steps. These steps are technically justified, but they could be streamlined to reduce the time necessary to obtain a permit. The cost associated with obtaining a building permit is roughly 1% of development costs and varies from city to city. This cost is not affordable for the majority of those who apply. Also, information on how to obtain a building permit is not widely disseminated, thereby rendering it more difficult to pursue a building permit.

The Town Planning Act stipulates that applications for a building permit should be approved within 60 days; however, in reality the process of obtaining a building permit usually takes

¹⁵ Population and Housing Census (2008), Town and Country Planning Guidelines (1987)

between 3 to 6 months. This can be attributed to frequent postponement of town planning committee meetings, poorly staffed and equipped local planning offices, lack of robust decision making bodies, and corruption. The panel was not able to assign a score for this dimension without additional information.

4.2.4 Transparency of valuations

Transparency of Valuation						
LGI	#	Indicator	A	B	C	D
10	i	Clear process of property valuation		■		
10	ii	Public availability of valuation rolls	■			

The Local Government Act provides the legal basis for the process of property valuation and rating. It stipulates that local authorities should undertake a valuation of all assessable property within a local government area at least once every five years (known as the Quinquennial Valuation Roll or QVR). Local authorities are also called to undertake a supplementary valuation once every year to include any new assessable property or any property which was omitted during creation of the valuation roll. The valuation of land for taxation is based on market prices. Unfortunately, valuation rolls are not regularly updated due to lack of resources. The provisions of the Act are mostly applicable to urban areas and not to rural land. Valuation rolls also do not include informal areas and new areas of urbanization.

The Local Government Act stipulates that valuation rolls are to be publicly disseminated and available to any interested party. However, the majority of people have no access to them because they are centrally kept by local authorities and only displayed at few town council centers. Still, under the LGAF scoring system, the country scored highly on this dimension.

4.2.5 Tax collection efficiency

Tax collection efficiency						
LGI	#	Indicator	A	B	C	D
11	i	Property tax exemptions justified	■			
11	ii	Completeness of tax roll			■	
11	iii	Assessed property taxes are collected			■	
11	iv	Taxes higher than cost of collection			■	

Tax exemptions are clearly based on grounds of equity or efficiency and are applied in a transparent, consistent manner. In addition to exemptions for certain land uses, such as streets, sewers, and burial grounds, local authorities may grant exemptions on valid grounds for any property. 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.

Still, there is room for improvement in the tax system: the cost of collecting property taxes is considered to be high due to low compliance by property holders. In Malawi, major losses in property tax arise from under-collection as a result of delays in the renewal of valuation rolls and a general lack of capacity within local authorities and the Malawi Revenue Authority to

enforce the payment of assessed taxes. The panel also found that there are some overlaps between central and local authorities.

The majority of property holders liable for land or property tax are listed on the tax roll. However, as noted above, city councils often do not have up-to-date information on how much property there is and the growth rate of the cities. The valuation roll can miss out on some properties due to the complexity of the exercise and the limited time allocated for the exercise.

4.3 Management of Public Land

4.3.1 Identification of public land

Identification of Public Land						
LGI	#	Indicator	A	B	C	D
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				
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				

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 ownership is generally justified by the provision of public goods at the appropriate level of government, but management may be discretionary. Indeed, there is no information on how much public land there is in Malawi or how it is managed by different government entities. Most institutions using public land do not fully know their responsibilities or what to do when disputes arise. They also do not share information with each other on public land use and also not with MLHUD. It was also noted that different government institutions fail to deal with each other when there is abuse of land or land dispute. Limited human resource capacity and budget constraints have long been an obstacle to ensuring responsible management of public lands in Malawi.

Only 30% to 50% of public land is clearly identified on the ground or on maps, the panel estimated. Also, there are no clear mechanisms to control abuse or encroachment on public land. Statutory allocations for conservation areas such as national parks, game parks, and forest reserves are not registered, and as such these areas can be encroached upon or alienated. Topographic maps show the boundaries of conservation areas, albeit at a scale that cannot be precisely ascertained on the ground. Key information on land concessions may be recorded, but are not publicly available, and in many cases communities are not aware of public land boundaries except when there is a dispute.

The draft land policy has proposed the creation of a distinction between government land and public land to eliminate mistrust and confusion among citizens and land administrators. The policy recommends that the term *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,' while *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. The distinction was proposed in part to make the government's acquisition plans more transparent.

4.3.2 Justification of expropriation

Incidence of Expropriation						
LGI	#	Indicator	A	B	C	D
13	i	Transfer of expropriated land to private interests				
13	ii	Speed of use of expropriated land				

There are no comprehensive statistics on the amount of land annually expropriated. Still, the panel found that Malawi is doing fairly well in terms of the justification and fairness of expropriation procedures, with less than 10% of land expropriated in the past three years being used for private purposes. In addition, LGAF participants judged that more than 70% of the land that has been expropriated in the past three years has been transferred to its destined use. Yet, in cases of urban expansion, if the expropriated land is not ready for development, it can remain vacant for many years before actual development takes place, attracting squatting.

4.3.3 Transparency of expropriation procedures

Transparency of Procedures						
LGI	#	Indicator	A	B	C	D
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				

Under the Town and Country Planning Act, the Minister responsible for Physical Planning may declare an area as a statutory planning area. 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 area is therefore invariably a form of expropriation of land, meaning tenure holders are entitled to in kind or cash compensation. However, in many instances tenure holders are not immediately compensated after such declaration. Usually large parts of planning areas are 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. Indeed, the government has often delayed compensation or relied on urban developers to pay compensation; the panel estimated that less than 50% of expropriated land owners receive compensation within one year. As a result, affected households may lose their livelihoods. Moreover, in calculating the compensation, land is considered of no or little value, and the valuation only reflects improvement on the land.

Compensation 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.

Avenues to lodge complaints against expropriation exist; however, the costs involved render them accessible to only middle-income and wealthy households. The panel estimated that more than 80% of complaints about expropriation lodged during the last 3 years reached a first instance decision. However, the panel noted that this only applies to received complaints: Most communities are not aware of the compensation to which they are entitled and do not know of avenues for appealing against expropriation.

4.3.4 Allocation of public land

Transparent Processes for Divestiture						
LGI	#	Indicator	A	B	C	D
15	i	Openness of public land transactions				
15	ii	Collection of payments for public leases				
15	iii	Modalities of lease/sale of public land				

Public land transactions are not conducted in a transparent manner in Malawi. The way in which public land is made available to private interests is not through open tender or auctions, but through internal allocations by public authorities. The lack of transparency surrounding this process renders it susceptible to corruption, and inefficiency results as public land is being leased at prices lower than the market price. Prices for undeveloped plots offered by individuals are usually over 50% higher than what the government charges.

Regarding payment for public land sales, the LGAF panel judged that more than 90% of total agreed payments are collected from private parties on the sale or lease of public lands. The government has become more aggressive in collecting development charges, and payments are at times made after threats of repossession. Yet it must be noted that while private parties usually comply with paying initial development charges, land rents are not always subsequently paid. In order to ensure collection of land revenues, the government of Malawi needs to strengthen the public land authority with both financial and human resources.

4.4 Public provision of land information

4.4.1 Completeness

Completeness of Registry Information						
LGI	#	Indicator	A	B	C	D
16	i	Mapping of registry records				
16	ii	Relevant private encumbrances				
16	iii	Relevant public restrictions				
16	iv	Searchability of the registry				
16	v	Accessibility of registry records				
16	vi	Timely response to requests				

There are two types of registers, a deeds register and a charge register, but they are recorded jointly in the same facility. The majority of records for privately held land registered in the registry are readily identifiable in the registry maps or cadastre. However, some registry map sheets are in a poor state of repair and make it difficult for identification. Moreover, a lack of

human and financial capital has resulted in outdated maps of registry records in urban areas. Malpractices are also reported, resulting in fake deed plans being produced.

For rural estates, registration has been based on sketch maps and not full survey maps. Recently, the MLHUD announced that sketch plans are no longer permissible for registration, though this will require capacity building in the Survey Department. In the short term, the use of satellite imageries and handheld GPS devices would be a solution.

Relevant private encumbrances are recorded consistently in a reliable fashion and can be verified at a cost of MK5,000 by any interested party. The encumbrances include mortgages, cautions or court orders, and disputes over that property. Moreover, the most relevant public restrictions or charges on land are recorded consistently and can be verified at a low cost by any interested party.

According to registry officials, the land registry can be searched by parcel number, while the deeds registry is searched by the deed reference number. Copies or extracts of documents recording rights in property can only be obtained by intermediaries¹⁶ 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 one week of request. As long as all necessary documents are available, the registry officials try their best to provide timely information. Under the Business Environment Strengthening Technical Assistance Project (BESTAP), the MLHUD began to digitize title and deeds registration systems to enhance the accessibility of registry records.

4.4.2 Reliability

Reliability of Registry Records						
LGI	#	Indicator	A	B	C	D
17	i	Registry focus on client satisfaction		■		
17	ii	Cadastral/registry info up-to-date			■	

The work of Malawi’s registry officials is guided by the standards provided in the Registered Land Act. Yet, the registry does not actively monitor its performance against these standards, and the public, generally not aware of these standards, is unable to hold the registry accountable. The other challenge is the limited capacity of the registry both human and financial to deal with customer demands.

Currently, between 50% and 70% of ownership information in Malawi’s cadastre/registry is up-to-date, according to the LGAF panel. There is a mismatch between cadastral maps and actual situation on the ground due to the time lag for records to be updated once a transaction has been effected. The responsible authorities or organizations are seriously under-staffed and use archaic technology, which is very slow. Indeed, the MLHUD has a vacancy rate of 69.6% for technical staff, hindering its ability to maintain an up-to-date registry and cadastre.

¹⁶ 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.

4.4.3 Cost-effectiveness, accessibility, and sustainability

Cost Effectiveness, Accessibility, and Sustainability						
LGI	#	Indicator	A	B	C	D
18	i	Cost of registering a property transfer				
18	ii	Financial sustainability of registry				
18	iii	Capital investment in the system to record rights				

The panel assessed that the cost of registering a property transfer is equal to or greater than 5% of the property value in Malawi. Although the rate is fixed at MK5,000, the need to engage a lawyer for such transactions result in legal charges of up to 10% of the property value. In traditional housing areas, the transfer cost is only MK 2,000, which is less than 1% of the property value.

Total fees collected by the registry are less than 50% of the total registry operating costs, and the registry is not financially sustainable. Most of the fees are fixed rates and are considered low by the officials. 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.

Current capital investment in the registry system is low. There is lack of adequate good furniture, equipment, stationery and storage facilities. This lack of resources and poor working environment further weakens the capacity of the registry to generate income. Fortunately, initiatives through the BESTAP to invest more than one million USD in physical capital for the registry are in progress.

4.4.4 Transparency of service costs

Transparency of Service Costs						
LGI	#	Indicator	A	B	C	D
19	i	Schedule of fees for services is public				
19	ii	Informal payments discouraged				

Finally, a clear schedule of fees for different services is available to the public and receipts are issued for all transactions. Yet, because there is a lack of transparency and public involvement in the formulation of land transaction fees, in general Malawians do not understand the rationale behind the schedule of fees.

Registry officials in Lilongwe indicated that although incidents of illegal staff behavior happen, they are dealt with promptly using available rules and procedures in the government service if caught. Additionally, the Anti-Corruption Bureau will investigate and take action on all reported cases of illegal staff behavior relating to land. However, the LGAF panel concluded that systems to detect bribery and corruption within the registry are largely nonexistent. Senior staff members in the MLHUD are supposed to supervise and monitor the operations of the registry, but there are no established mechanisms to detect and address illegal staff behavior.

4.5 Dispute resolution and conflict management

4.5.1 Assignment of Responsibility for Dispute Resolution

Assignment of Responsibility for Dispute Resolution						
LGI	#	Indicator	A	B	C	D
20	i	Accessibility of conflict resolution mechanisms		■		
20	ii	Informal or community based dispute resolution			■	
20	iii	Forum shopping			■	
20	iv	Possibility of appeals			■	

In Malawi, land disputes are increasing; the LGAF panel estimated that they currently constitute between 10% and 30% of total court cases. In rural areas, the most common cases relate to inheritance and boundary disputes. By contrast, in urban areas, there are increasing cases of fraud in the deeds registry, whereby people steal information on title deeds for fake transactions.

Malawi has a clear dispute resolution system that ranges from community level conflict management (customary) to formal courts. The High Court has unlimited jurisdiction to handle all legal issues, including all land matters, as a court of first instance. Resident magistrate courts have limited jurisdiction in land matters because by Section 39 of the Courts Act, they are prohibited from determining any civil matter whenever the title or ownership of non-customary land is in question. Finally, local courts do not have jurisdiction over land matters; except in limited circumstances, substantial land matters must be brought to the High Court.

In addition to the court system, there is also a local level dispute resolution system for customary land tenure. Local chiefs at the village and traditional authority levels provide first line of dispute resolution at the local level. There are also district councils that serve as referral points for land disputes. The limited jurisdiction conferred on magistrates and local courts has meant that a significant portion of the rural population lack access to formal courts and must resort to informal proceedings before local chiefs. Yet, accessing justice through traditional chiefs can add layers of complication since customary law varies by location, and the decisions of traditional chiefs can be influenced by personal relationships. While there is a process to appeal rulings on land cases through higher level courts (e.g. the High Court and Supreme Court), the costs are high and the process can take a long time.

Although Malawi's dispute resolution system is hierarchical in principle, in practice they are available to the public as parallel avenues for conflict resolution (e.g. one can lodge a case with chiefs and the formal court at the same time). Sharing information and evidence among these different avenues is often done in an ad hoc manner, and the formal court system is not mandated to seek information and evidence from the traditional system for reference. There is therefore a need to reconcile customary law with statutory laws, and to establish a system of documenting and sharing information and evidence among the different avenues for conflict resolution.

The National Land Policy of 2002 includes a proposal to establish a more transparent land conflict resolution system through district level and traditional authority level land tribunals. This system emphasizes the inclusion of women in tribunals, appointing members based on

their expertise and good standing in the community, and decision making by simple majority voting.

4.5.2 Pending conflict level

Low Level of Pending Conflicts						
LGI	#	Indicator	A	B	C	D
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 years)			■	

Land disputes often take long periods of time to settle since they involve many stakeholders and the search for credible evidence can be difficult. Delays often result from incorrect adherence to procedures for bringing cases, frequent adjournments during hearings, large numbers of witnesses testifying, missing original court files or documents, delays by counsel, and the retirement or death of honourable judges before cases have reached conclusion.¹⁷ Currently, the LGAF panel estimated that less than 50% of land-related cases are decided within 1 year or less in the first instance court, and roughly 20% of cases are considered to be long-standing cases. For these reasons, there is an urgent need to improve dispute resolution systems to speed up resolution of land conflicts. This may be possible if local courts are granted jurisdiction over more types of land disputes and if special land tribunals are established with the mandate to mediate and arbitrate land disputes.

¹⁷ 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. Judges who reach retirement age have their pending cases handed over to another judge.

5 Policy Priorities

The LGAF exercise revealed that the country ranks at the bottom of the scale for many indicators of land governance: 43 out of 80 dimensions were scored as “weak” or “very weak.” Among the many policy recommendations that were raised and agreed upon during the LGAF workshops, local experts emphasized the need to improve stakeholder participation and coordination. Following this recommendation, the MLHUD is proceeding with the establishment of a multi-stakeholder land governance task force. The task force will follow up on LGAF policy recommendations, coordinate post-LGAF monitoring efforts, and advocate for land issues to gain greater support from within government, civil society, and the private sector.

Enactment of a New Land Law

New land laws are long overdue in Malawi; the current legal framework regulating land rights dates back to the 1960s and is rooted in colonial land policy. Many of the recommendations on how to improve Malawi’s legal and institutional framework revolve around the need to enact a new land law implementing the 2002 National Land Policy. Titling and registering customary land, creating customary estates with full legal recognition and protection, strengthening the land rights of widows, streamlining the compensation and resettlement process – these are but a few examples of recommendations which require the passing of a new land law before they can be carried out. As such, it is clear that expediting the enactment of a new land law is one of the LGAF’s key policy recommendations.

Decentralization of Land Administration

The LGAF study highlighted the need to decentralize land administration in Malawi and empower district authorities and local communities to manage land rights and related disputes. Capacity building programs for local institutions are recommended to help them better manage land matters within their jurisdiction (eg. maintain records of customary ownership, enforce restrictions and regulations, etc.) The authorities should speed up process of compensation payments and resettlements by empowering local authorities to effect compensation instead of waiting for the central government. Local authorities should also speedily implement projects and enforce changes in land use after compensation has been made.

Land information management should also be decentralized so that it is more readily available to the public. In addition, stronger local authorities may be able to enforce land restrictions and regulations which are generally challenged when enforced by central authorities in a top-down manner. Local authorities would be better placed to determine whether restrictions take into consideration the livelihood needs of their communities, and would be able to establish appropriate by-laws to facilitate engagement of the public.

Civic Education

The government, in collaboration with civil society organizations, should implement programs to widely disseminate information on land related policies and laws so as to educate people on provisions relating to their land rights in Malawi. The use of community mapping should be promoted as a vital part of the demarcation and titling process in Malawi to encourage individual citizens and communities to take active interest in local land matters. Raising public awareness on the processes and costs associated with land or property transactions is another key recommendation. For urban dwellers, this should be coupled with

civic education on the restrictions on urban land rights. The LGAF panel recommends that the government undertake efforts to widely disseminate information on public land and how land information is managed in Malawi. There is also need to sensitize the general public to the established standards so that they may monitor performance of the registry.

Securing Land Rights of the Poor

The LGAF study has revealed that much effort is needed to secure land rights of the poor in both rural and urban/peri-urban areas. This will require public intervention in large scale demarcation and surveying to assist poor landholders in the process of land individualization. Surveying procedures should be reviewed and simplified to reduce costs, (e.g. adopt the usage of satellite imagery and handheld GPS). In order to prevent the spreading of informal settlements, government intervention should focus on facilitating the self-managed process of housing plots acquisition being undertaken by low-income households. Sites without a services scheme should be considered, whereby 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. Serious consideration should be made regarding the issuance of certificates/licenses/permits for occupation for the urban poor, for failure to recognize their right to housing would be detrimental to enhancing security of tenure.

Enhance the Efficiency of Conflict Resolution

The LGAF panel 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 proposed:

Separate Land Tribunals specializing in land matters (like the Commercial Court) should be established to deal with all aspects of land law (i.e. customary law, leasehold law, freehold law, and all other interests and rights associated with such holdings). The tribunals should exist at all levels, from the community level to the district and national levels. Once 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.

Alternatively, since magistrates and local courts can be found across 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 appeals process will follow that provided by the Courts Act.

6 Conclusion

Despite pockets of good practice within Malawian land governance, significant barriers to the efficient and sustainable utilization of land resources remain. The chief policy priority is the enforcement of land rights, particularly given the prevalence of customary tenure in Malawi. A new land law is essential for the provision of security of tenure and the promotion of investment in agriculture and urban development. Likewise, the land information system requires greater coordination and modernization, which will have the added benefits of improving efficiency in land management and minimizing opportunities for corruption. Weaknesses in land administration, particularly the dearth of land use planning in rural areas of the country, need to be addressed. Participants in the LGAF process have drawn out these challenges and presented key policy options for the Malawian government to consider, in coordination with the land governance task force. Renewed attention to land management – especially the passage and implementation of a land law – over time may help to facilitate the development of an efficient land market, attract investment, and provide the foundation for increased agricultural productivity and shifts toward higher-value production.