

NEW LAND ACTS AND IMPLICATIONS On

**Customary land holding, access to land for large commercial
agriculture, women's and youth access to land**

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Introduction

- The MLHUD together with the relevant stakeholders underwent a rigorous review of the then Land Act in order to address the gaps that existed
- The process included coming up with a completely new customary land law
- There are a total of ten land related laws that have been assented to out of which six are amendments

The New Land Act And The Customary Land

- The previous Land Act vested both public land and customary land in the President where Section 8 the previous Land Act provided that **“all public land is vested in perpetuity in the President”**.
- In contrast, the new Land Act vests all land in the Republic . Section 8 of the new Land Act provides that **“All land is vested in perpetuity in the Republic”**. **This includes customary land.**

The New Land Act And The Customary Land

- Most importantly, provisions of section 8 of the new Land Act, 2016 are in tandem with the provision of section 207 of the Republican Constitution which vests all lands and territories of Malawi in the Republic.
- The previous land Act did not provide for registration of customary land as private land. This compromised issues relating to land tenure security as promulgated in the Malawi National Land Policy (MNLP)

The New Land Act And The Customary Land

- Lack of tenure security contributes to **low agricultural productivity** since there is **no sense of ownership of the land being held or used.**
- In fact, the review process of the National Agricultural Investment Plan (NAIP) identified lack of tenure security as one of the challenges to agricultural investment

The New Land Act And The Customary Land

- In contrast to the above, the new land Act provides for registration of customary land in form of customary estate. Section 19 of the new Land Act provides that nothing in this Act shall be construed as preventing the registration of customary land under the Registered Land Act as private land.
- **The most important aspect regarding the creation of customary estate** is that an individual will now be able to own land in his/her own right thereby having a guaranteed tenure security. This is one of the main goals of the National Land Policy

Land Ownership By Women And Youth

- With the creation of a customary estate under the new Customary Land Act, **an individual , either man or woman** will be registered as the owner of the land which in turn can be used to create a lease or sub-lease
- The Customary Land Act, 2016 will also allow registration of persons as **joint tenants or tenants in common** (Ref section 20 of the Customary Land Act, 2016 and section 95 of the existing Registered Land Act (Cap. 58:0))

Land Ownership By Women And Youth

- The advantage of owning property as joint tenants is that when one person dies, the survivor automatically takes over the property without applying for Letters of Administration.
- The process of obtaining Letters of Administration is quite costly since the personal representative will be required to pay estate duty to Government and legal fees to the Legal Practitioner who is engaged to apply for Letters of Administration.

Land Ownership By Women And Youth

- **Minors (persons under the age of 18 in Malawi)** will also be able to get registered as proprietors of customary estates in their own right since the Registered Land Act provides for registration of minors in their own right – see section 108 (1) of the Registered Land Act.

Land Ownership By Women And Youth

- Having the law that provides for ownership of land by women and the youth is not enough
- In the pipeline is the development of the Gender Strategy with support from the EU under the Land Governance Project
- The strategy will among other things carry out an assessment of key issues and barriers for women and other vulnerable groups concerning land rights and engage local institutions to address gender issues

Land Ownership By Women And Youth

- Currently, the process of recruiting the consultant to carry out the assignment has commenced and hopefully the consultant will be in place by the end of this month.

Compensation on Customary Land

- The previous Land Act did not provide for payment of compensation in respect of Customary land compulsorily acquired under the Lands Acquisition Act (58:04), compensation is only made for the **improvements on the land** not for the **land itself**.
- The new Land Act expressly provides for payment of **appropriate compensation** for customary land which will be transferred to Government or reserved land. Since customary land will now be registered as private land (customary estate), assessment for compensation will include land itself and not only improvements thereon {see section 17(8)(a) } of the **Customary Land Act, 2016**.

Establishment of Land Committees and Tribunals

- The new Land Laws provides for the establishment of Customary Land Committees for the management of customary land.
- To ensure that there is women voice in the committees, membership shall comprise six persons, **at least three of whom shall be women.** Similarly, membership of the customary land tribunals shall have at least three female members out of the six.

The New Land Act And Large Scale Agriculture

- The review process of the National Agriculture Investment Programme identified access to land by investors as one of the barriers to investment in the country
- However, the new Land Act addresses the above challenge

The New Land Act And Large Scale Agriculture

- The previous Land Act did not provide for **setting aside land *specifically* identified or earmarked for investment purposes**. The new Land Act however provides that land for investment purposes be **identified, gazetted and allocated to Malawi Investment and Trade Centre** with powers to issue derivative rights to investors.
- Successful implementation of the Land Act will therefore ensure that large scale commercial agriculture thrives in the country

The New Land Act And Large Scale Agriculture

- You may also wish to note that the law also provides for land ceilings based on the nature of investment and location of the land.
- The new Land Act therefore ensures that land for agriculture should be treated as such
- The Act will also prevent investors from acquiring large parcels of land for speculative purposes as is the case in other parts of the country where some developers leased large parcels of land which they are failing to effectively utilise.

[For reference purposes, the provisions above are contained in section 11 of the Land Act, 2016]

The New Land Act And Large Scale Agriculture

- There is also the provision of transfer of customary land for public interest that includes investments of national interest.
- With regard to the above, customary land shall be transferred subject to among other conditions payment of *appropriate compensation as assessed by the registered valuer.*
- Most importantly, there is also a provision that the Minister shall direct the payment of compensation by the person to whom or organisation to which the land has been transferred to and is granted under lease.

The New Land Act And Large Scale Agriculture

- Currently, it is the OPC's responsibility to pay compensations.
- This will in a way speed the process of land acquisition by investors

Land Laws Implementation

- Having the land laws in place is not a panacea to land administration and management challenges in the country
- We all need to join hands in the implementation of the land laws
- As a Ministry, we have developed a costed road map with which to pilot the implementation of the laws and some of the intervention areas are as follows

Roadmap

No	Intervention Area	Activities
1	Setting up of Institutional/Administrative Framework	<ul style="list-style-type: none">➤ Establish land reforms implementation structures➤ Carry out systematic registration of customary estates on pilot basis

No	Intervention Area	Activities
	Development of Instruments for Implementation of Existing and Additional Laws	<ul style="list-style-type: none"> ➤ Develop land-related subsidiary legislation (rules, regulations, guidelines and standards) ➤ Produce process manuals based on assessment of existing practices, background studies and piloting ➤ Prepare National Physical Development Plan (National spatial framework for implementation of sector programmes and projects) ➤ Develop national planning guidelines and standards (for monitoring and enforcement of regulations and plans)

Roadmap

No	Intervention Area	Activities
3	Development of Instruments for Implementation of Existing and Additional Laws	<ul style="list-style-type: none">➤ Produce local planning manual (for decentralized planning and monitoring)➤ Prepare district physical development plan (pilot districts)➤ Develop village land use plans (pilot districts)➤ Finalize National Land Use Policy➤ Develop Resettlement Policy; and Resettlement Bill (to provide for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason, including disasters)

Intervention Area	Activities
<p>Development of Instruments for Implementation of Existing and Additional Laws</p>	<ul style="list-style-type: none"> ➤ Develop Sectional Title Bill (to provide for title registration of building properties within a property at various height levels) ➤ Develop Valuation Bill (to provide for the regulation of valuers and the valuation of property that has been identified for acquisition or disposal) ➤ Review Adjudication of Titles Act ➤ Develop National Urban Policy ➤ Draft Landlord and Tenant Bill ➤ Review land policy and land-related laws every 5 years : starting with a review of the 2002 Malawi National Land Policy to make it relevant to the current situation on the ground

	Intervention Area	Activities
4	Preparation of Land Information Management Framework	<ul style="list-style-type: none"> ➤ Modernize survey reference system ➤ Revise base maps ➤ Digitize all land-related records ➤ Design and develop integrated Land Information Management System (LIMS) incrementally ➤ Assess usability of data in Global Titles and Deeds System (GTDRS) ➤ Establish district land registries ➤ Establish regional hydrographic offices

No	Interventions Area	Activities
	Management of Agricultural and Non-Agricultural Leasehold Database	<ul style="list-style-type: none"> ➤ Assess quality of data on land leases and resolve emerging issues ➤ Ascertain land rights ➤ Decide on handling of floating and flying estates ➤ Decide on management of overlapping estates ➤ Enhance management of paper-based records ➤ Identify idle estates through field verification and analysis of historical satellite data from 2005 to 2014

	Intervention Area	Activities
	Mobilization of Resources for Implementation of Land Reforms	<ul style="list-style-type: none"> ➤ Revise all land-related fees and charges after consultations ➤ Conduct a land market study ➤ Introduce land tax on freehold land both within and outside city boundaries after consultations ➤ Reinstate land rent roll on estates based on LIMS ➤ for implementation of land reforms ➤ Send out demand notices ➤ Monitor revenue collection

Conclusion

- Earlier on alluded to, we will be calling for a workshop to share with all the stakeholders the contents of the roadmap
- Continued support in the implementation phase of the land laws is very key

THANK YOU