



Government Of The Republic Of Malawi

**MALAWI NATIONAL
LAND POLICY**

Ministry of Lands and Housing

17th January, 2002

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FOREWORD

Land is the most basic of all resources available for social and economic development in Malawi. When considered in combination with water, it produces other resources including arable soils, forest, pasture, wildlife habitat and marine ecosystems valuable to people. Through the forces of nature and/or prior actions of many generations, these resources are spatially distributed in differing quantities in differing locations throughout Malawi. This distribution of land related resources is, however, not static; people have the ability to alter the mix. They can conserve or deplete existing resources or they can invest time and effort to improve the stock of certain land resources by improving accessibility.

Policy planning is a conscious effort on the part of policy-makers to achieve, via appropriate policy instruments, both national goals and specific targets for resource allocation outcome. In that sense, this national land policy, presented in the form of a coherent socio-economic policy framework, should legitimately be viewed as seeking a mechanism to promote proper stewardship of land resources for development. The policy provides a sound institutional framework for land management and introduces, among others, much needed procedures for more effective land based investment selection, land market transactions and management of development at all levels.

This policy epitomizes a vision in the political context with immense economic and social significance. The policy requires board support to accord legitimacy to the government's attack on poverty. Nevertheless, this has to be done in a way that will not compromise the expectation of the market or ignore the realities of resource constraints. Another vital part of the development process in Malawi is empowering individual citizens and communities to take active interest in their affairs. Land policy serves as a powerful symbol and focus for that local development effort. It provides a mechanism for reconciling widely differing attitudes towards Malawi's development challenges. It also sets forth, as a national guideline for action, the incorporation of desirable principles of land use and management, effective civic education and broad public appreciation of the constraints and trade-offs that need to be made.

Given the complexities of managing land resources and the inter-relationship of land-use decisions with other aspects of the effort to create a socially and economically rewarding life for all Malawians, it is imperative that all stakeholders, including traditional leaders, ordinary citizens and the investor community join the Government's commitment to implement this land policy.

To this end, I would like to thank my staff, all the citizens of Malawi, the donor community, civil society and technical advisors who contributed by their comments and constructive participation throughout the formulation process to make this policy a worthy representation of the will of the people.

Hon. Thengo Maloya, M.P.
Minister of Lands and Housing
17th January 2002.

LIST OF ACRONYMS

AWP	Annual Work Plan
CBD	Central Business District
CLSB	Central Land Settlement Board
CLUS	Customary Land Utilization Studies
CRM	Chief Resident Magistrate
DANIDA	Danish International Development Agency
DFID	Department of International Development
DLO	District Land Office
DTTA	District Tribunal of Traditional Authorities
ELUS	Estate Land Utilization Studies
EU	European Union
FAO	Food and Agricultural Organization
GDP	Gross Domestic Product
GN	Government Notice
GOM	Government of Malawi
GPS	Global Positioning System
LIS	Land Information System
MAGICC	Malawi Geo-data Information Coordinating Committee
LIMS	Land Information Management System
MHC	Malawi Housing Corporation
MLH	Ministry of Lands and Housing
NLIMS	National Land Information Management System
NPDP	National Physical Development Plan
NGO	Non-Governmental Organization
PLUS	Public Land Utilization Studies
TA	Traditional Authority
TALT	Traditional Authority Land Tribunal
TC	Traditional Courts
TLT	Traditional Land Tribunal
TLB	Traditional Land Board
TLC	Traditional Land Clerk
USAID	United States Agency for International Development
CLC	Customary Land Committee
VLT	Village Land Tribunal
WB	World Bank
WGS	World Geospatial System

GLOSSARY

Allodial Interest: The highest proprietary interest known to customary schemes of interest in land. It is sometimes referred to as the paramount title, absolute title or radical title.

Cadastral Map: A map that shows how a locality is divided into units of ownership.

Cadastre: A public register of the quantity, value, and ownership of the land of a country compiled for the purpose of public policy.

Customary Law: Unwritten law established by long usage. Malawi and most African countries define customary law as rules of law, which by custom are applicable to particular communities.

Dambo: Permanent wetlands

Encroachment: Any development on land for which the developer has no legal interest or planning and building permit for the development.

Ndunda System: A tenure system designed for the Lilongwe West Development Project to give security of ownership over customary land through the registration of title.

Open Market Value: This is the best price at which the sale of an interest in property might reasonable be expected to have been completed unconditionally for cash consideration on the day of valuation assuming:

- a) Willing seller and a willing buyer;
- b) That, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, for the agreement of price and terms and for the completion of the sale;
- c) That the state of the market level of values and other circumstances were, as on any earlier assumed date of exchange of contracts, the same as on the date of valuation; and
- d) That a purchaser with special interest takes no account of any additional bid.

Social Function of Land Criteria: The social function of land is defined as the most socially desirable use of land considering its location and scarcity value, physical and environmental attributes and the appropriate land management plan for its effective utilization.

Title: The evidence of a person's right to property.

Traditional Authority: The area of indigenous geo-political and socio-economic jurisdiction; an indigenous state (customary sovereignty) sometimes of a single lineage descent group that represents the source of authority of the Chief as the *primus inter pares*. The Traditional Authority is also a symbol of kinship unity and its responsibilities devolve upon its living representatives, the Chief and his councilors.

Traditional Land Management Area: The geographic area of land held by a community and administered by a Traditional Authority on behalf of the communal group.

Unexhausted Improvements: Unexhausted improvement refers to improvements of any quality permanently attached to land directly resulting from the expenditure of capital or labor by a person holding a right in land being valued.

Usufruct: Rights in land held by a member of the land holding community or a stranger who has obtained an express grant from the land holding community using customary mode of alienation. It is at times referred to as customary freehold, proprietary occupancy or determinable title.

SUMMARY OF MAIN POLICY RECOMMENDATIONS

The Malawi National Land Policy epitomizes the government's desire to address the constraints to Malawi's social and economic development caused by the absence of a comprehensive land policy. The following are some of the key recommendations.

A. Distinction between Government Land and Public Land

1. **Government Land** will henceforth 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.
2. The **Public Land** categorization will be reserved strictly for 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 will include land gazetted for National parks, Conservation, Historical, Military, etc.
3. In the case of customary land managed by Traditional Authorities, common access land reserved as *dambos*, community woodlots, etc, will be classified as public land exclusive to members of the Traditional Authority.
4. Except in the exercise of the state's police powers, all acquisitions by the government will require negotiation and the payment of compensation at fair market prices for the land as well as improvements on the land.

B. Land Access And Tenure Reforms

1. The Government will allow all customary land to be registered and protected by law against arbitrary conversion to public land. The traditional supervisory role of chiefs, clan leaders, headpersons and family heads in land matters will be formalized and streamlined to allow uniform administrative procedures and transparency in all customary land transactions.
2. All customary landholders, defined to include entire communities, families or individuals will be encouraged to register their holdings as private customary estates with land tenure rights that preserve the advantages of customary ownership but also ensures security of tenure.
3. Private leasehold estates shall be created as subsidiary interests out of any private land, including registered customary estates without relinquishing the ownership of the customary landholder. This provision will allow traditional leaders, family heads and individual holders of registered customary land to grant leases.

C. Land Access For Non-Citizens

1. The amount of freehold land in Malawi owned by non-citizens will be frozen and limited to freehold land already registered to non-citizens as of 17th January, 2002. Non-citizens will no longer be allowed to acquire title to any new freehold estate.
2. Non-citizens and foreign companies will be permitted to lease land from the Government or directly from private landowners for investment purposes in accordance with their residential, investment and profit objectives.
3. From the coming into force of this policy, freehold ownership will be a privilege reserved for citizens of Malawi. Foreign investors interested in freehold land for investment purposes will be encouraged to form partnerships and/or joint ventures with Malawians.
4. In accordance with current Malawi immigration laws, non-citizens currently in possession of freehold estates in Malawi will be encouraged to obtain Malawian citizenship in order to retain their free ownership. The citizenship right of eligible non-citizens will be protected by law and will not be politicized or left to individual discretion.
5. Subject to existing transfer laws, non-citizens already in possession of registered freehold assets of publicly traded corporations shall be permitted to transfer such assets to other non-citizens only when deemed necessary to preserve the investment value of these companies.
6. With the exception of a few very special types of investments, such as mining, forestry and some perennial tree crops such as tea (a comprehensive list of eligible investments shall be prepared), most leasehold terms for industrial and commercial investment purposes throughout the world generally are for less than 50 years, with renewal clauses allowed. For that purpose, the standard leasehold term for land leased for investment purposes in Malawi will also be for a renewable term of 50 years or less.

D. Land Use Planning And Registration

1. Land use planning will be extended to all rural and urban land, including freehold, leasehold and customary estates. However, the declaration of a planning area will not automatically require the conversion of all customary land to public land, as has been the practice prior to this Land Policy. Instead, all landowners in such planning areas will be required to comply with approved planning and development regulations.

2. Urban physical planning and development controls will be enforced to discourage speculation, and guidelines for rural land use planning, conservation and environmental management will be developed by Local Planning Authorities and Community Development agencies to guide rural and urban land use and development decisions.
3. To avoid lengthy and costly delays in the granting of land titles and the issuing of leases, land administration responsibilities will be decentralized and District Land Registries established in each district to record all land transfers, conveyance and title registration, and to offer surveying and land management services.

E. Land Administration and Dispute Settlement

1. In the interest of Malawi's economic and social development, the Land Policy provides guidelines designed to encourage certain cultural attitudes and traditional land institutions to change in line with contemporary cultural norms.
2. The Government strongly supports gender sensitive access to land and calls for changes in inheritance laws to allow the remaining spouse, children and especially orphans to inherit the property of their parents even when the deceased parent or parents die without a will.
3. The land administration role and responsibilities of Chiefs, Clan Leaders, Headpersons and Family heads will be formalized and made more democratic and transparent.
4. The Government will install special protections for the land rights of minors and place a legal duty on Chiefs, Headpersons and adult members of the family to protect the land rights of a surviving spouse and children in both matrilineal and patrilineal inheritance areas throughout Malawi.
5. In areas with higher than normal land pressure, the Government will encourage community-based land acquisition and development strategies to ease land pressure and secure the resources necessary to support the resettlement of land starved households.

F. Cross-cutting and Inter-Sectoral Issues

1. The land policy calls for training, modernization and capacity building in all the surveying and land management professions (Planners, Surveyors and Valuers) to ensure adequate professional advice and support services are available for land use and environmental management decisions at all levels of government and by the private sector.
2. The Government supports community participation in the management and the right to a share of the revenue derived from public land established on

land managed by a Traditional Authority. This includes land reserved for national parks, forest reserves and protected areas.

3. Other land sector policy reforms enacted since 1994 to encourage agriculture, forestry, tourism, mining and natural resource management and habitat preservation are also recognized and affirmed by this policy.

This land policy has been prepared carefully and in a balanced way to remove most of the pressing problems that has created tenure insecurity and undermined speedy and transparent land transactions in Malawi. In many cases, the inadequacies of existing laws, delays in land administration, arbitrary applications of the public interest criteria, constraining inheritance laws and uncertainty regarding the strategies for dealing with land pressure have all operated to discourage needed investments and the nations ability to eliminate poverty and pursue social harmony.

Fundamental measures and processes contained in this National Land Policy will equip Malawi to minimize, if not eliminate the most constraining land problems and bring progress and prosperity to all.

1.0 INTRODUCTION

1.1 Background

1.1.1 In Malawi, as elsewhere in the world, land policy reflect the imperative of changing economic, political, social circumstances. The country has endured a history of continuously reconstituted clusters of traditions, colonialism, rules, expectations and conflicts, which gave rise to changing land regulations and practice. The principles and guidelines set out in this National Land Policy together with legislation to be enacted in support, will give substance to Malawi's quest for a comprehensive land law with immense economic and social significance. The policy also provides a sound institutional framework for democratizing the management of land and introduces much needed procedures for protecting land tenure rights, land-based investments and management of development at all levels.

1.1.2. Policy planning is a conscious effort on the part of policy-makers to achieve, via appropriate policy instruments, both national goals and specific targets for resource allocation. In that sense, this national land policy, presented in the form of a coherent socio-economic policy framework, should legitimately be viewed as seeking a mechanism to promote optimum utilization of Malawi's land resources for development.

1.1.3. Malawi has operated without a comprehensive policy on land matters for a long time. The present system is a product of colonial history and settlement patterns, policies of the one party era and recent demographic trends. All these events to some extent contributed to the problems that affect land tenure and land utilization today. The right to own land must be respected, but land problems extend beyond individual tenure rights. They involve issues on rural and urban land management, community development, and the advancement of agriculture and protection of the environment.

1.1.4. In order to address these land-related social welfare problems, land reform should be dealt with fundamentally and comprehensively. Nevertheless, this has to be done in a way that will not compromise the expectation of the market or ignore the realities of resource constraints. Another vital part of the development process in Malawi is empowering individual citizens and communities to take active interest in their affairs. Land policy serves as a powerful symbol and focus for that local development effort. It provides a mechanism for reconciling widely differing attitudes towards Malawi's development challenges.

1.1.5. Given the complexities of managing land resources and the linkages between land-use and the effort to create a socially and economically rewarding life, it is imperative that this national policy be promoted. The Land Policy has the definite objective of ensuring equal opportunities for the acquisition, use and enjoyment of land for all citizens. This objective can best be achieved by the actions required by this Land Policy to incorporate desirable principles of land use management, effective civic education and broad public appreciation of the constraints and trade-offs that need to be made.

1.1.6. The Government is convinced that the steps that have to be taken to achieve these land reform objectives give broad support to poverty alleviation. It also offers the best opportunity to bring about a land dispensation that is economically sound and compatible with the basic values and ideals of the nation.

1.2 Policy Formulation Process

1.2.1 In developing this Land Policy, the Ministry of Lands and Housing (MLH) pursued a consultative approach that involved a number of measures in order to achieve the following objectives:

- ❑ Collect and analyze scientific and empirical information necessary for making accurate and informed decisions about land utilization;
- ❑ Place ownership of the Land Policy in the public domain through the work of the Presidential Commission of Inquiry on Land Policy Reform and reliance on national consultants;
- ❑ Build consensus among key stakeholders and thus establish public confidence in the formulation process to enhance chances of implementation;
- ❑ Establish synergies and areas of complementarity with other land sector agency policies to ensure consideration of crosscutting issues.

1.2.2 These objectives were achieved through the following consultative activities:

- a. **Policy Planning Unit and Task Force:** With the support of the World Bank, the Ministry of Lands and Valuation in 1995 established the Policy Planning Unit (PPU) to review existing policies and laws and to steer a comprehensive approach to land policy reform. A 22 member multi-disciplinary and inter-ministerial task force that included representation from government, stakeholders from private industry, non-governmental organizations and civil society groups supported the PPU. Experienced National Consultants and one International Consultant supported the PPU in its work. This ensured local ownership of the process.
- b. **Land Utilization Studies and Special Reports:** Because of the very sensitive nature of land matters, the ministry sought the assistance of a consortium of donors, including the World Bank, DANIDA, DIFD, EU, FAO, and USAID provided support for a series of background studies designed to provide the empirical and analytical basis for any proposed policy reforms. Some of the special studies conducted to understand land utilization from 1996 focused on the following areas:
 - ❑ Land Use Study, using air photo interpretation was used to assess the extent of cultivation within customary areas.
 - ❑ A Tracer Study based on National Sample Survey of Agriculture was used to collect additional information in order to estimate the intensity and efficiency of customary land uses.

- ❑ A Socio-economic Study of Land Tenure was conducted to understand the procedures and processes of customary land allocation and alienation.
- ❑ Estate, Public and Customary Land Utilization and Interaction Studies to assess land use effectiveness and socio-economic linkages between land-use categories was performed.
- ❑ Special Land Tenure Case studies to evaluate the stability of land tenure arrangements of special programs and smallholder associations was produced in order to understand their crosscutting implications for poverty alleviation and land resources management.
- ❑ Additional studies were conducted from 1996 through 1998 on commercial estate and public land tenure as part of a comprehensive review of land use and resource management in Malawi.

1.2.3 The review of literature also included secondary sources of information from international development agencies, the scholarly and scientific community and other sectoral policies with strong synergies with land.

- a. **The Presidential Commission:** To ensure the views of the citizens were not overlooked, the government took the initiative to establish the Presidential Commission On Land Policy Reform with the assistance of UNDP in 1996. The mandate of the Commission was to promote scholarly discourse, gather the opinions of the private sector, ordinary citizens and non-governmental organizations, and to organize their findings in such a manner as to aid the land policy reform efforts of this Ministry.
- b. **The Secretariat:** the Ministry had opportunity to synthesize all the background research, public findings and the results and input from special studies. Work on the preparation of the draft policy document (which started in January 2000) also benefited immensely from the report of the Presidential Commission. In the final phase of the process initiated in 1995, the Ministry engaged in an extensive consultative process as outlined below. An Inter-ministerial Steering Committee composed of senior officers selected from various government ministries assisted the Ministry in its work.

1.2.4 **Stakeholder Consultations:** A series of stakeholder consultative meetings, discussions and symposia were conducted throughout the drafting process across the nation and at all levels as follows:

- a. **Small Focus-group Gatherings:** Most of the preliminary policy proposals were discussed in small gatherings 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.
- b. **Regional consultative workshops:** Three Regional Workshops, one for each administrative area, were held from July – August 2000. More than

600 participants, including some members of parliament, political leaders, traditional leaders, members of the judiciary, civil society and ordinary citizens attended these regional consultations. The regional workshops were used as a platform for a critical examination of the policy recommendations under consideration for a variety of issues and land problems. They also served as avenues for soliciting public opinion on potential policy intervention strategies for addressing identified challenges in the land sector.

- c. ***Expert Opinions and Revisions:*** A number of Malawian scholars and land policy experts identified by international development organizations also subjected the policy recommendations expressed in the draft document to further scrutiny. Their opinions and recommendations were incorporated to improve and ensure its consistency with both regional and international expectations.
- d. ***National Consultative Workshop (NCW):*** A National Consultative Workshop was convened in October 2000 at the new State House in Lilongwe. It brought together an even larger cross section of participants representing all stakeholders and some international observers. All participants received a full copy of the draft Land Policy and a package of workshop documents designed to facilitate discussion and suggestions for revising the document. The views expressed and recommendations suggested provided a final test of the validity of the draft policy objectives, strategies and planned interventions.
- e. ***Further Public and Stakeholder Consultations:*** During the National Workshop and immediately after, the Minister of Lands and Housing made public appeals to all stakeholders and ordinary citizens to examine the policy recommendations, to submit constructive criticisms and to recommend modifications for consideration. The Ministry allowed a waiting period of more than seven months following the National Workshop during which a number of stakeholders submitted written proposals or expressed their opinions in the radio, newspapers and on national television. Comments were received from NGOs and Civil Society organizations, the Tea Association, The Small Holder Tobacco Association, the Malawi Association of Bankers, and delegations of Chiefs and ordinary citizens. The Ministry arranged private audiences with some and gave serious consideration to all the comments received.
- f. ***Political Clearance process:*** The political clearance process required careful review by the Cabinet Committee on the Economy and a series of presentations and discussions with Heads of land sector Ministries and policy makers in Government by the Minister responsible for lands and key advisors from the Ministry. Cabinet approval of the policy was finally granted on 17th January 2002.

1.2.5 Extensive consultation, while it may have protracted the process, allowed the thought processes of the Ministry to expand beyond the confined furrows previously thought possible and to break new ground. The end product is a framework for land management in Malawi that sought and obtained the guidance of ordinary citizens and technical advisors in a variety of fields for the purpose of making the policy truly representative of the will of the people.

1.3 Guiding Principles

1.3.1 Land is the most basic of all resources available for social and economic development in Malawi. The existing land tenure system and pattern of land use is the result of antecedent customs, human settlement and demographic processes, modified by legal and economic influences of the colonial era and previous policies on land utilization. In preparing the Land Policy, the following guiding principles were used.

1.3.2 **Land Policy:** Land Policy consists of a whole complex of socio-economic and legal prescriptions that include the system of land tenure, and influence how land resources and the benefits from the land are to be distributed. Therefore, national land management should entail decision-making and the implementation of decisions about land.

1.3.3 **Secure Land Tenure:** Malawi's macroeconomic performance in 2000 shows the economy has remained quite unsatisfactory in the past five years. There was a 46% decline in the performance of the small-scale agricultural sector and an overall decline in real GDP growth from 3.6% in 1999 to 2.1% in 2000. Failure to reform and secure the tenure rights of smallholders has long been established as the primary cause of under investment, reliance on primitive technology and a fundamental reason for low wages in most rural areas. Because of the continuing deterioration of real incomes at the household level coupled with the heavy dependence of rural communities on the land, it is the Government's imperative to place land policy at the center of the nation's poverty reduction strategy.

1.3.4. **Sustainable Land Management:** The correlation between ineffective land policy and poverty also negatively impair land resource management practices throughout the country. Because previous land policies neglected to reform the smallholder sector in particular the prevailing attitudes encouraged degradation and a rejection of traditional land resource management ethos in many rural communities. This national land policy presents a coherent socio-economic framework for promoting environmentally sustainable management of Malawi's land resources for development.

1.3.5 **Productive and Efficient Land Use:** The thrust to streamline land policy is to encourage citizens with the ability and resources to make productive and sustainable investments in land to have access and security of tenure. However, the desire to improve access also heightens the risk that, if legal security and other assurances of tenure are not provided, especially to customary landholders, land market uncertainty and population pressure may deprive some holders of the right to land. Therefore, the challenge for Malawi is to find the policy framework that

will respond to market signals and people's aspirations about how to use land within the regulatory environment set by the basic laws of the country.

1.3.6 Land Administration: The administration of land is primarily concerned with controlling land use. Land use is a combination of human activities that occur on land and are specifically tied to parcels of land. Conserving virgin forest, subdividing land to accommodate housing development and zoning an area for commercial and industrial purposes are all forms of land use. Therefore the physical planning perspective provides a framework to reconcile social and economic objectives through the preparation of land use plans that optimize the distribution of private benefits without compromising the welfare of the nation as a whole.

1.3.7 Vulnerable Groups From the institutional perspective, land policy is primarily concerned with social actions that influence and control people's use of the land. More often than not, the rights of women, children and the disabled are denied on the basis of customs and traditions that are no longer relevant, or they are totally disregarded due to prejudice and lack of effective representation. This being so and in view of the effects of increasing land pressure due to population as well as the devastating effects of HIV/AIDS pandemic, a clear policy on gender access and the rights of children and the disabled should always be considered in policy planning and implementation strategies.

1.3.8 Institutional Framework for Land Management: This national land policy includes not only the analysis of the constitutional context in which land is held and used in Malawi. It includes the legal framework by which issues relating to access and the content of land rights, control of land use by the state and traditional organs are determined. This policy provides a sound institutional framework for land management and introduces, among others, much needed procedures for more effective land based investment selection, land market transactions and management of development at all levels.

1.3.9 Land Information System: Land information is needed when changes in land use are required. The basic unit upon which land records can be compiled is the land parcel. Several categories of land information systems developed around land parcels exist to provide precise spatial, environmental and cadastral information, or specific legal rights and duties vested in land to support land policy administration. Thus, a careful approach to the registration of ownership of interests in parcels of land will be combined with the development of a Malawi Geo-data Information Coordination Committee (MAGICC) as an instrument for planning and land policy administration.

1.3.10 Optimum Utilization of Land: The government considers it important that while encouraging a market-oriented economy, land should be used in the most productive manner. The government intends to encourage an open market in land that will cause land values to move towards their highest and most desirable uses. The land market simply allows people to select space for themselves, and to signal the need for change in the availability of specific types of land. Often, the presence of profitable investment opportunities in land will encourage optimal utilization of land to occur.

1.3.11 Legal Framework for Land Policy: To pursue the objectives of this National Land Policy, a new comprehensive land law will be passed to give legal effect to the policy guidelines presented in this document. The same law will institutionalize, once and for all, a modified and accountable land administration system that makes local and district governments the principal agents for land administration. Besides, the new land law will give the administrative structure required and the legal authority to implement the new policy recommendations.

1.4 Policy Objectives And Priorities

1.4.1 Land Policy Goal: 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.

1.4.2 Land Policy Objectives: A number of specific land policy objectives have to be satisfied in order to achieve this overall goal. Particular among them are the need to:

A. Promote tenure reforms that guarantee security and instill confidence and fairness in all land transactions:

- ❑ Guarantee secure tenure and equitable access to land without any gender bias and/or discrimination to all citizens of Malawi as stipulated under Article 28 of the Constitution.
- ❑ Instill order and discipline into land allocation and land market transactions to curb land encroachment, unapproved development, land speculation and racketeering.

B. Promote decentralized and transparent land administration:

- ❑ Ensure accountability and transparency in the administration of land matters, and guarantee that existing rights in land, especially customary rights of the smallholders, are recognized, clarified, and ultimately protected in law.
- ❑ Set guidelines for establishing economically viable ceilings on land ownership that will be translated into a statutory mandate to prevent extreme land concentration in a few hands, or individuals and/or organizations and extreme fragmentation.

C. Extend land use planning strategies to all urban and rural areas:

- ❑ Extend land use planning and strategies for disseminating land information to ensure effective utilization of land in urban and rural areas.

- Facilitate efficient use of land under market conditions to ensure optimum benefits from land development.
- D. **Establish a modern land registration system for delivering land services to all:**
 - Provide formal and orderly arrangements for granting titles and delivering land services in modern and decentralized registration system that support local governments throughout Malawi.
- E. **Enhance conservation and community management of local Resources:**
 - Promote community participation and public awareness at all levels to ensure environmentally sustainable land use practices, and good land stewardship;
- F. **Promote research and capacity building in land surveying and land management:**
 - Promote research and continuous education of the public on all aspects of the duties and obligations of land tenure, land stewardship, and operations of the land market.

1.5 Structure and Organization of Sections

1.5.1 To achieve the objectives of the National Land Policy, the sections of this document have been organized into ten logical parts.

Sections 2 and 3 provide an abridged historical overview and summary of land problems that led to the need to formulate this Policy. These sections identify key historical issues as well as recent challenges created by the absence of a comprehensive land policy. They also present the long-range goal and objectives that guided the preparation of the document.

Section 4 provides clear definitions and categories of land tenure and outlines the policy proposals to reform the land tenure system. The Section also devotes attention to new policy recommendations according statutory recognition to customary tenure and protections against fraudulent acquisitions and dispositions of customary estates.

In Section 5, the focus is on land administration issues. It includes recommendations for making more transparent and democratic the responsibilities of traditional leaders at all levels of the land administration hierarchy from Chiefs and Sub-Chiefs down to Clan leaders, Headpersons and Family Heads.

Section 6 discusses land use planning and development control requirements. In addition to extending the need for planning to all urban and rural areas, the section

also discusses strategies for encouraging compliance with development controls, including areas covered under the Lakeshore Development and Land Use Management Control Order.

Sections 7 and 8 discuss the challenges caused by the lack of professional capacity in the surveying and land management professions and call for the adoption of alternative surveying methods to facilitate the preparation of cadastral plans. The Government recognizes the need to decentralize land administration by establishing District Land Registries to assist local assemblies and district development agencies manage local development.

Sections 9 and 10 deal with issues that pertain to community management of land resources, conservation and environmental management, habitat preservation and land degradation. Section 10 in particular focuses on inter-ministerial, interdisciplinary and cross cutting issues including gender access, agriculture, capacity requirements and the administrative and fiscal capacity of Local Assemblies for monitoring the implementation of land policy.

2.0 HISTORICAL EVOLUTION OF LAND POLICY

2.1 Background to The Country

2.1.1 Malawi is a landlocked country with an agricultural economy that accounts for over 40% of Gross Domestic Product (GDP). The country is wedged between Zambia to the west, Tanzania to the north and northeast and Mozambique to the southeast, south and southwest. Lake Malawi defines 548 kilometers of Malawi's eastern border and serves as an important economic resource and navigation channel. The physiology of the country is characterized by undulating terrain with five large plateaus; namely Mulanje, Zomba, Dedza, Viphya and Nyika, dominating the landscape.

2.1.2 The country's population in 1998 was approximately 9.8 million people and has been growing at an average rate of 1.9% per annum. Of this population 12% were enumerated in the Northern Region, 41% in the Central Region and 47% in the Southern Region. The land area occupies 118,324 square kilometers of land and water, of which 53,070 is considered suitable for cultivation. With more than 105 inhabitants per square kilometer of arable land, Malawi has one of the highest population densities in Africa and this has contributed to land degradation and accelerated deterioration of natural resources.

2.1.3. The assessment of overall land availability, given in Table 1 below, indicates that Malawi has a total of 11.8 million hectares of which 9.8 million is land. Agricultural estates occupy 1.2 million hectares and the area potentially available for agriculture by small farmers is approximately 4.5 million hectares after adjusting for wetlands, steep slopes and traditional protected areas.

Table 1: Overall Land Availability in Malawi

	Million ha	%	% of Total
Total Land Area of Malawi	9.4		100
Less 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	100	82
Estimated land Under Estates	1.2	16	13
Land Available for Smallholders	6.5	84	69

2.1.4. According to the National Statistic Office (NSO), 55% of smallholder farmers have less than 1 hectare of cultivable land, which does not meet their basic food needs. As a result, more than half of the population lives below the poverty line of US\$140 per capita income annually. In absolute terms, the poverty of the country is predominantly rural and is reflected in the below average social indicators. The illiteracy rate is about 56% for the overall population. Malnutrition is widespread, and the child mortality rate at 238 per 1000 is among the highest in the world.

2.1.5. Overall macroeconomic growth declined from 10.3% in 1998 to an average annual rate of 4.1% in 2000 and 2001 with the decline in the tobacco market. The smallholder sector, which contributed over 43% of GDP, also accounts for 87% of the labor force, although its productivity has fluctuated since 1981. For example, production declined by

3.1% in 1997, but was followed first by strong average growth of about 12% in 1998 and 1999 and a sharp decline to 3.5% in 2000 and 2001. Over the same period, the contribution of the estate sector saw a steady increase as more and more land was converted to tobacco, tea, and sugar production. Furthermore, Malawi's economy has been plagued with a variety of problems. Periods of severe drought have combined with high population growth and rising inflation to increase Malawi's dependence on international aid. To make matters worse, efforts to adjust the structure of the economy by bringing administrative and fiscal discipline have also contributed to cuts in social services and a decline in government expenditure in real terms.

2.1.6. This overall decline of real incomes has had the consequence of increasing poverty for the majority of citizens. The smallholder sub-sector has also exacerbated the problems of under investment by their reliance on primitive technology. These have resulted in serious environmental degradation, especially deforestation, soil and habitat losses. In this setting, understanding the evolution of land policy and the legal regime governing the country's land resources is an important first step in the development of future land management strategies.

2.2 The Evolution of Land Law

2.2.1. 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 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.

2.2.2. The presence of European settlers led to the passage of the Nyasaland Order in Council, 1902 and allowed the general application of English law supplemented by specific enactments based on English property law. This clause remained the sole source of the substantive law of property in Malawi until 1964 when the Supreme Court of Appeal Act (Cap. 3:01) came into effect and incorporated it.

2.2.3. The Land Ordinance of 1951 defined land as public, private or customary. However, "customary" land, was in essence defined as a mere species of "public land" (or crown) land. This was an arrogant concession to Malawi citizens who, by virtue of the Ordinance, become tenants on their own land. This position was re-enacted in the Land Act (Cap 57:01), which came into force in 1965. The passage of the Land Act in 1965 did not change the status and insecurity of customary land rights caused by the application of the Land Ordinance of 1951.

2.2.4. The first serious attempt to provide a comprehensive body of land law was made in 1967 with the passage of the Registered Land Act (Cap 58:01) and the Customary Land Development Act (Cap 59:01). However, the limited application of both Acts to Lilongwe West made the effort to secure customary rights by the enactment of the Registered Land Act an incomplete experiment entirely dependent on the efficiency of land administration personnel. Because of these previous policy failures, there is need to enact a basic land law that would apply to all land, irrespective of tenure.

2.3 Effects of Colonial Land Policy

2.3.1. A careful review of land legislation in Malawi from colonial to post-colonial times concludes, as indeed many others have done, that:

First, the imposition of English Law in general and English property concepts in particular has constrained the evolution and growth of customary land law. As a result, there is need to design and enact a basic land law that would provide a broad framework for the determination of property rights, for the conduct of proprietary transactions, for the control and management of land, and for the settlement of disputes over land.

Second, care should also be taken in that framework to provide mechanisms and guidance for the orderly evolution of customary land law and to encourage a more transparent management of land held under customary tenure.

Third, not enough antecedent property law was received to provide Malawi with a robust juridical basis for unambiguous interpretation of land rights. As a result, the ability to determine claims arising from the corpus of land laws in Malawi remains rudimentary and undeveloped.

Finally, the Registered Land Act remains a statute of very limited application and needs to be revised and extended to apply to all land, irrespective of tenure.

Policy on Traditional Land Rights

Land rights derived from the traditional system of land tenure are reducible to the ownership of specific rights by individuals, families and communities. Unfortunately, previous policies deliberately failed to recognize the pattern of individual usage and rights in customary land to be free ownership. Therefore, provision will be made to rationalize and accord full statutory recognition to customary land rights.

2.4 Contemporary Development Without Policy

2.4.1. The government of Malawi has operated without a comprehensive land policy since independence. The 1965 Land Act currently in use no longer reflects the practical realities of Malawi's land management problems and opportunities. Consequently, the land policy environment in Malawi has been characterized by weak planning coordination, absence of proactive policy interventions and limited capacity for dynamic monitoring at all levels of land administration.

2.4.2. Some of the main effects of operating without a comprehensive policy on land can be summarized as follows:

- a. Failure to deal with the land policy concerns from the 1960's and 1970's have indirectly contributed to today's problems of poverty, food insecurity, and perceived inequities in access to arable land.
- b. In most areas the void created by the absence of clear policy direction heightened tenure insecurity, environmental degradation and the cultivation of marginal land areas. Soil loss due to erosion and deforestation is currently estimated to average 20 tons per hectare per annum.
- c. Besides the loss of soil fertility and agricultural productivity, the frequency of land tenure encroachments has increased in recent years. This trend has also been attributed to increasing poverty and poor enforcement capabilities of government agencies.
- d. Increasing environmental degradation, loss of biodiversity, diminishing surface and ground water aquifers is a manifestation of land pressure. Since 1972, total forest cover has declined by more than 41% mainly due to the demand for wood fuel and clearing to expand cultivation.
- e. The legal structure inherited from the colonial era has been used to weaken the customary sector and to make the estate sector bias feasible rather than reformed. This heavy bias in favor of the estate production mode appears to contribute to the shortages of arable land in some regions.
- f. Fraudulent disposal of customary land by headpersons, chiefs and government officials often deny critically needed access to people most desperate for land.

2.4.3. Food security, increased rural incomes and effective utilization of land can only be assured in Malawi by a careful examination of (i) the existing tenure tenets and enabling customs, (ii) the current land policy and enabling land legislation, and (iii) by implementing the requirements for encouraging land policy reforms that will stimulate economic growth.

2.4.4. These observations from previous land utilization studies and the recommendations of the Presidential Commission has reinforced the Government's desire to accelerate the pace for drafting a new national land policy for Malawi.

3.0 OVERVIEW OF LAND PROBLEMS

3.1.1. The problems associated with land in Malawi are many and varied and are, in many ways, a symptom of a much deeper social discontent and economic hardship. Specific problems arising from the simultaneous operation of customary land tenure and private ownership regimes create institutional obstacles with crosscutting effects. In the absence of a comprehensive land policy the avenues of expression are limited and ad-hoc policy responses by the government have tended to be short-term and ineffective. Although not intended to be exhaustive, a summary of some of the main land problems prevalent in Malawi is as follows:

3.1.2. **Residual Effects of Colonial Land Policy:** In common with other Southern African countries Malawi inherited a rural settlement structure in which white farmers held some of the most fertile and well-watered lands. The effect of the concentration of freeholds in districts settled by the white farmers in the Southern Region and subsequent expansion of estate agriculture after independence is a relatively skewed distribution of freeholds in the country. As a result there is an urgent need for strategies to relieve land pressure in the severely affected parts of the country.

3.1.3. **High Population to Land Ratio:** According to the National Statistical Office (NSO) the country's population, estimated at 9.8 million in 1998, has been growing at about 1.9% per annum with an average population density of approximately 105 persons per square kilometers. However, this population is not evenly distributed throughout the country. The Southern Region (146 persons/sq. km) has some of the highest population densities in the country and is urgently in need of population relief and land redistribution solutions.

3.1.4. **Land Scarcity in spite of Idle Lands:** On the basis of estimates made in 1994, 2.6 million hectares of suitable agricultural land remains uncultivated in the rural areas. This means that approximately 28% of the country's total land area is lying idle. Similarly, speculative holding of urban plots and lack of infrastructure causes artificial shortages of urban development land.

3.1.5. **Provocative Squatting:** Squatting in gazetted forests, national parks, on private land and other protected areas in land pressure districts has become frequent and sometimes violent.

3.1.6. **Worsening Land Pressure:** Land pressure has substantially increased land tenure insecurity and uncertainty despite attempts by communities to consolidate access rights both physically and legally. The difficulties created by land pressure and tenure insecurity manifest themselves through increased land degradation particularly in customary land areas.

3.1.7. **Privatizing Access to Customary Land:** There is increasing evidence that, as the economy becomes more commercialized and less dependent on subsistence agriculture, access rights defined by customary rules are also becoming more private and restrictive than before. In the absence of clear and transparent policy, it is difficult for most citizens to understand the evolving rules of access and security of existing customary land rights.

3.1.8. **Mismanagement Of Land Development:** The evidence of under utilization of land, obstruction of watercourses, illegal development, and unplanned or unregulated buildings in urban settlements indicate a failure of development controls. These are occurring in the context of all land tenure categories and land uses.

3.1.9. **Cross Border Encroachment by Immigrants:** Evidence of encroachment by nationals from Tanzania, Mozambique and Zambia into Malawi can be attributed to the fact that many border communities share linguistic and blood ties with one another and hence claim reciprocal rights of access to land and their kinsmen. Thus the existence of “international” boundaries and territoriality is often ignored.

3.1.10. **Encroachment onto Conservation and Protected Areas:** The fact that the creation of some National Parks and Protected areas involved the displacement of entire villages, some of which were forced to move into valleys and uncultivable areas remains a source of grievance making some parks and protected areas vulnerable to encroachment.

3.1.11. **Uncontrolled Allocation of Lakeshore Land:** Particularly prone to illegal development is the lakeshore, which has from time immemorial been under the jurisdiction of Traditional Authorities. In the recent rush by individuals and corporations to erect private leisure cottages and hotels, planning and development problems have gone unchecked.

The Government is convinced that:

- (a) Since land scarcity, whether actual or perceived, can have serious implications for land tenure and land relations, the underlying causes and consequences of tenure insecurity will be addressed by strategies that provide access and security of tenure to citizens with the ability and resources to make productive and environmentally sustainable investment in land.
- (b) In view of the steadily increasing pressure on land, this policy will be implemented to ensure security of tenure, peaceful co-existence, growth-oriented investments, and planned utilization of land.
- (c) The Government will through community-based land acquisition and land development programs ease growing land pressure in areas especially prone to conflicts. A realistic program of population management and family planning will be necessary as an additional strategy for easing those problems
- (d) Respect for the law and protection of the integrity of accrued property rights is important for establishing a stable land tenure system. The constitutional protection of private property rights and due process of law will be applied to protect investments and production factors tied to land. These principles are fundamental to the maintenance of social harmony and democratic values in Malawi.

4.0 LAND TENURE REFORMS, ACQUISITION AND DISPOSITION

4.1 Sovereign Right of Land Ownership

4.1.1. The Government affirms that, the welfare and development objectives of the nation can best be achieved within a system of private ownership of interest and participatory governance. Consequently, the radical title to all land in Malawi, irrespective of land tenure regime, will continue to vest in the state, traditional authorities and in some cases individuals and families. However, every person has a natural dependence on land and it is the responsibility of the government to assure the private rights of citizens by making provisions for secure and equitable access to land as a multi-purpose resource and an economic asset. Article 28 of the Constitution of Malawi aims to assure every citizen of their inalienable right to acquire property alone or in association with others (including foreigners), and to protect the property of citizens from arbitrary seizure.

4.2 Categories Of Land Ownership

4.2.1. With the coming in force of this land policy, the categories of land recognized in Malawi will be defined as follows:

4.2.2. **Government land** will comprise land acquired and privately owned by the government and dedicated to a specified national use or made available for private uses at the discretion of the government.

4.2.3. Government land is in the context of this Land Policy, used as a more specific description of land acquired by the Government or agencies of the Government to serve a specific national purpose. For clarity, Government Land will include land reserved for government buildings, schools, hospitals, etc., or government owned land leased for exclusive use by individuals, companies and institutions for which ground rent is often paid.

4.2.4. **Public land** will be land held in trust and managed by the Government or Traditional Authorities and openly used or accessible to the public at large. This category of land includes land gazetted for use as national parks, recreation areas, forest reserves, conservation areas, historic and cultural sites, etc.

- (a) The *public land* designation applies also to all land vested in the Government as a result of uncertain ownership, abandonment and land that is unusable for one reason or another.
- (b) Within a Traditional Authority, the community's public land will include all land within the boundaries of the TA not allocated exclusively to any group, individual or family. This designation applies in particular to *dambos*, dry seasons communal grazing areas, etc. Such **common access** or unallocated customary land reserved for the community are regarded as public only to members of that community and will be protected.

4.2.5. In the past, the absence of any distinction between Government Land and Public Land caused a lot of mistrust and confusion among citizens and land administrators. Because the public land designation was used to effectively expropriate customary land without compensation, it remained at the root of most of Malawi's land problems. This new distinction makes the Government's acquisition plans more transparent. The distinction is also 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.

Taking the distinctions between Government and Public lands into consideration, the Government will ensure that:

- (a) All land deemed necessary for national development purposes in Malawi shall be acquired and vested in the State as *government land* to be managed on behalf of the nation by the Minister responsible for lands, or by other designated agents of the government.
- (b) 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.

4.3 Trustees of Public Land

4.3.1 Holding land in trust for citizens does not make a Headperson, Chief, or any public official the owner of the land.

It is therefore imperative that, whereas the management of any public land by a public agency could justify the granting of leaseholds and other intermediate uses, it does not automatically transfer ownership to the trustee and as such should not be interpreted as private to the Headperson, Chief or the Government.

4.4 Private Land

4.4.1 Under Section 24 of the Registered Land Act, registration of a person as the proprietor of any land makes that person or groups of persons the registered owners of private land. Thus, Private land is all land that is exclusively owned, held or occupied under (a) **freehold tenure**, and (b) customary land allocated exclusively to a clearly defined community, corporation, institution, clan, family or

individual. Such exclusive allocations of customary land will henceforth be known formally as a “**customary estate.**”

4.4.2. A **leasehold estate** can be created out of Government land or any private land including customary estates so long as the term of the lease is less than that of the owner. However, in protecting private property as a constitutional right, it is important to note that:

- (a) A leasehold interest under common law is a private contractual right subject to the enforcement of development conditions imposed by the owner. It is, in practice, equivalent to a tenancy arrangement and will be recognized as a legitimate source of land title.
- (b) Because a lease grants exclusive use rights, a *leasehold estate* is also regarded as private land held by the leaseholder.

Because Public Land, in this policy is land reserved for public uses and accessible to the public at large, no leasehold estates are to be granted on land classified as public land. Existing leaseholds established on land previously classified as “public land” will henceforth be reclassified as leaseholds on Government land.

4.4.3 **Escheat:** All private land will be subject to common residual rights of the state, such as compulsory acquisition and the right of reversion to the state in case the owner dies without any heirs. However, in the case of customary estates, the residual right of reversion is first, to the traditional authority and ultimately to the state.

4.5 Land Tenure Reform, Acquisition And Disposition

4.5.1 **Customary Land:** By definition, customary land is all land falling within the jurisdiction of a recognized Traditional Authority, which has been granted to a person or group and used under customary law.

4.5.2 **Customary law** comprises rules grounded in prevailing customs that are applicable to particular communities. As a result, **customary tenure** is the right to own, use or dispose of land rights not based on documentary evidence guaranteed by government statute, but based on customary laws and on the fact that they are recognized as legitimate by the community, enforced in the customary courts, or even merely by social pressure and normally not recorded in writing.

4.6 Formalization of Traditional Management Areas

4.6.1 The customary tenure system forms the basis of Traditional Authority and has remained central to cultural identity and social organization in Malawi. Failure to recognize the authority, from which customary land title has devolved, would leave a gaping hole in the evolution and statutory recognition of customary land tenure as a right protected by the Constitution.

4.6.2 In the past, land under customary tenure has been treated as a subset of public land, vested in the President under the Land Act, and has been taken by the state without adequate compensation and allocated as leasehold estates from the state. Although, there are no comprehensive maps showing the boundaries of traditional land areas, this Land Policy calls for a return of land administration to Traditional Authorities by requiring the following actions.

- (a) With the exception of land expressly registered as private land, or gazetted as “government land” all remaining land in Malawi shall be classified as customary land.
- (b) To ensure cultural cohesiveness, and to make titles more certain (secure) and more static, a deliberate course of action will be taken to demarcate and formally register all customary land interests of Traditional Authorities in recognition of communal land areas.
- (c) The entire land area demarcated and registered as falling under the jurisdiction of each Traditional Authority will be known officially as a “**Traditional Land Management Area.**” This designation will be used to disclose the root of title and allocating jurisdiction of legally recognized Traditional Authorities.
- (d) The administrative capacity and resources required by the Surveyor General to survey and prepare maps showing the boundaries of Traditional Authority areas should be provided as a precondition to *the registration of customary estates* required to formalize customary tenure.

4.6.3 This policy would ensure that traditional leaders retain a copy of the survey plan attesting to the land area demarcated and registered as the land management area of the Traditional Authority.

4.7 Definition of a Customary Estate

4.7.1 Communal land rights in Malawi are closely connected to ethnic identity and Traditional Authorities (TA’s). This creates a powerful system of land allocation regimes and a tenure system designed to preserve the asset base of the community for current and future generations. People traditionally see land and kinship in a genealogical map through which access to land is reached. Families and individuals are allocated exclusive fee simple usufruct in perpetuity, subject only

to effective utilization. However, the radical ownership remains in the Traditional Authority.

4.7.2 Customary law restricts customary allocations to usufructuary rights because, in principle, customary title is vested in traditional leaders on behalf of the people. Total alienation of any of this land, such as by granting freehold title to non-citizens, diminishes the land assets of the community specifically affected, and by extension the nation as a whole.

In response to growing economic pressure and in recognition of the ongoing evolution of customary ownership towards stronger individualized rights, the Government will affirm customary tenure security by granting full legal protection to customary estates defined below:

- (a) The Government will affirm the growing assertion of exclusive land 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.**”
- (b) The fundamental principles of customary tenure shall be preserved and codified for general application to customary estates throughout Malawi.
- (c) 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 loan.
- (d) The fee simple estate will be defined to protect the right of inheritance directly by the children and surviving spouse of the deceased landowner without discrimination on the basis of gender.
- (e) The administrative role and land management responsibilities of **Traditional Leaders** will be defined to complement the formalization of customary estate and safeguarded by statute.

4.7.3 However, because the interest of the proprietor of a customary estate is usufructuary, the registration of a sale, lease or mortgage is not with absolute title and will be subject to what are known as overriding interests of the community and the sovereign rights of the state (e.g. mineral rights).

4.8 Definition of Freehold

4.8.1 The term “freehold” originally meant that the land was held by services of a free nature and not that it was free from all rent and conditions, as its name seems to imply. The term freehold expresses not only the quality of the tenure but also the quantity of the estate. For example, the *fee simple estate* refers only to the right of inheritance to general heirs. This is different from the *fee tail*, which restricts inheritance to particular heirs. Furthermore, a *life estate* allows a tenant, for

example, to use land exclusively for the duration of that particular person's life only.

4.8.2 Thus although **freehold tenure** has become synonymous with absolute ownership, it is the estate, which defines the peculiar tenure, or the terms upon which the claims of the owner is to be based. **Leasehold tenure**, on the other hand, is simply 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.

4.8.3 Freehold tenure has some unique features that provide security of tenure and exclusive user rights:

- (a) A freeholder has exclusive possession of the land in perpetuity. There are no term limits placed on the title of the owner.
- (b) Subject to land use planning, the owner has the right to subdivide or lease the land, etc., without seeking the government's approval.
- (c) No development conditions are imposed on the owner if the land in question lies outside the boundary of a planning area.
- (d) The Government has no legal right to interfere with the occupational right to land.

Because of its exclusive features, freehold tenure is often misconstrued to be above the law. That is not the case in Malawi or anywhere else in the world. To clarify the government's position with respect to freehold tenure, this Land Policy reaffirms the following special characteristics:

- (a) Section 207 of the Constitution vests all land in Malawi in the Republic and it does not exclude freehold or any other tenure category.
- (b) 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.
- (c) Finally, the principle of eminent domain allows the Government to compulsorily acquire any property by virtue of its sovereign authority and in the public interest. This authority is reinforced by Section 24A of the Land Act which requires all freehold owners to give the Minister responsible for lands, 30 days notice and the first right to acquire the land whenever the title holder wishes to sell.

4.9 Leasehold Tenure

4.9.1 All leasehold interests are necessarily derived directly or indirectly from a superior tenure holder, the owner. The right to use land created by granting a lease, irrespective of the tenure regime, is private and formally restricted to the term of years and the conditions (covenants) defined in the contract by the grantor or landowner. However, the reversionary interest would remain vested in the landowner even after a lease has been granted.

4.9.2 Leasehold rights granted for both agriculture and building purposes allow the tenant to occupy and use the land for a specified term by paying a *rack rent*, which may be fixed by reference to the value and location of the parcel. Under common law, such leasehold agreements normally require the tenant to submit the land or building in good repair to the landlord at the end of the lease term, or to compel the landowner to renew the lease or sell the reversion to the tenant.

4.9.3 Leasehold estates created by the state currently confer rights of private use and are protected by current law. However, similar private leasehold arrangements in respect of customary land has not, in the past qualified under statutory law as granting “private land” rights. Full legal status as private land has been recognized only when customary land has been registered by the Registered Land Act as “customary freehold” or “Ndunda” under the Customary Land (Development) Act.

To correct this anomaly, the Government will ensure that all owners of registered customary estates enjoy equal treatment under the law as private land.

4.10 Management of Leasehold Estates on Customary Land

4.10.1 In accordance with current policy, the state acting as a trustee on behalf of the customary landowners, can grant leasehold rights to third parties. However, the state is expected to do so as a trustee under fiduciary responsibility to the owners. That is, the state would be required to pay compensation to owners deprived of the use of their land or to relinquish part of the rack rent paid by the tenant to the owners. Furthermore, ownership and control will revert to the customary owner(s) at the end of the lease and cannot automatically shift title to the state.

- (a) The Government will reaffirm the reversionary rights of customary landowners. However, under no circumstances will the government condone any illegal acts and/or customary interpretations of the law that deliberately or indirectly interfere with the exclusive use and occupation legally granted to existing leaseholders.
- (b) Existing leases that were legally created out of customary land (previously classified as public land) and registered will continue to be honored and protected by law for the full term of the lease without any

disturbance. The Government would initiate the steps required to relinquish a portion of the rack rent paid by the tenant to the owners.

4.10.2 Only by adhering strictly to *due process of law* can an existing statutory lease be modified, extended or terminated. This legal requirement applies to all grantors, including government officials, Chiefs and Headperson. The land and everything permanently attached will revert to the traditional owner(s) after the expiration of the lease and will not shift title to the state.

4.11 Facilitating Equitable Access for Citizen

4.11.1 Malawians regard access to land as a fundamental right. However, people's demand for land is not for the land itself, but for farming, residential and investment purposes. As a result, demographic and economic pressures as well as the capacity to mobilize capital or access credit to develop land affect demand. Access to land is also, affected by the number of people wanting to hold land as an investment and the incentives to do so as a form of security.

This policy will ensure that security of tenure can be guaranteed on an equitable basis to all citizens in accordance with the following principles:

- a. Any citizen or group of citizens of Malawi can have access to land in any part of Malawi provided that:
 1. Land is available for disposal in that part of the country where access is being sought.
 2. The person agrees with the landowner to adhere to the covenants, customs and practices legally enforceable under the laws governing the disposal of the land.
 3. The person undertakes to utilize the land in accordance with land use plans, environmental regulations and community land management duties and obligations applicable to all such lands in the area.
- b. There can be no valid transaction in private lands between or among Private entities if:
 1. There is evidence of duress or conflict of interest within, between or among any category of private owners or stakeholders.
 2. The area has been declared protected, sensitive or found unsuitable for development.

To avoid the problems currently caused by the failure to recognize the market value of customary land, land values shall be determined by open market procedures for customary lands acquired through compulsory acquisition by the government.

4.12. Facilitating Access for Non-citizens

4.12.1 Under the present land law, any person, a citizen or foreigner, can apply and be allocated land for any permissible use ranging from residential, industrial, agricultural and ranching. Regulating non-citizen ownership of land in a small nation such as Malawi is a principle employed by a number of countries to prevent citizens from becoming landless in their own country. To prevent any future problems of this nature, the following policy regulating land access for non-citizens and foreign companies will be affirmed by statute:

- (a) In granting land to non-citizens, the rights and interests of the citizens of Malawi shall be safeguarded.
- (b) To encourage access to land with transparent legal guarantees, non-citizens and foreign companies will be permitted to lease land from the Government or directly from private landowners for residential and investment purposes in accordance with their investment and profit objectives.
- (c) With the coming into effect of this policy, only citizens will be permitted the privilege of owning freehold title in Malawi. Access to land for non-citizens will be construed as purely for residential and investment purposes and an appropriate renewable leasehold term determined.
- (d) Non-citizens will no longer be allowed to acquire any new freehold rights or interest in Malawi after 17th January, 2002. Foreign investors interested in freehold land will be encouraged to form partnerships with Malawian fee owners.
- (e) In accordance with current Malawi naturalization laws, non-citizens in possession of freehold estates in Malawi will be encouraged to attain Malawian citizenship in order to retain their freehold ownership. The right of citizenship for eligible non-citizens will be protected by law and will not be politicized or left to individual discretion.
- (f) Failure to naturalize will automatically cause title to the land in question to be converted to a renewable leasehold contract with the reversion to the state.
- (g) Subject to existing transfer laws, non-citizens already in possession of registered freehold assets of publicly traded corporations shall be permitted to transfer such assets to other non-citizens only when deemed necessary to preserve the investment value of such companies.

This policy is intended to limit the amount of freehold land held by non-citizens and foreign corporations.

4.13 Access to Land for Investment Purposes

4.13.1 With the exception of a few very special types of investments, such as mining, forestry and some perennial tree crops such as tea, most leasehold terms for industrial and commercial investment purposes throughout the world generally are for less than 50 years, with renewal clauses allowed. For that purpose, the standard leasehold term for land leased for investment purposes in Malawi will also be for 50 years or less.

- (a) All citizens and local companies shall have equal access to land in Malawi.
- (b) Non-citizens and foreign companies interested in acquiring land for investment purposes in accordance with the Investment Promotion Act, shall be eligible for renewable leasehold contracts and their investment assets protected by the laws of Malawi and the provisions of Malawi's international trade and investment agreements.
- (c) The standard leasehold term for land leased for investment purposes in Malawi will be determined on the basis of specific industry requirements, or for a renewable term not exceeding 50 years.

4.14 Acquisition and Disposition of Land

4.14.1 At present big parcels of land are allocated to individuals, private firms and foreign investors regardless of their proven ability to develop them. As a result, large areas of land remain undeveloped or are held for speculative purposes for several years. This has happened, for example, in the Mulanje, Thyolo and Kasungu Districts, and in urban centers particularly, Lilongwe and Blantyre. If due care is not taken villagers in such high population districts and some residents in urban centers will find themselves without access to land even though vacant and undeveloped parcels of land exists.

The Government shall require that:

- (a) Government land is allocated to investors according to their ability to develop them and that interests of citizens over their land are safeguarded.
- (b) The Government, depending on the type of activity and location of the land, will establish guidelines for setting ceilings on the size of land controlled by any one person, group of persons or organizations. Similar guidelines to prevent extreme land fragmentation will also be determined.
- (c) Investors seeking to acquire land for investment through the government

will be required to submit a sound feasibility study (or studies) of the proposed activity (or activities) and evidence of ability to develop the said parcels or plots.

- (d) Planning and development conditions shall be strictly monitored and where necessary, punitive tax incentives imposed to prevent speculative holding of agricultural and urban development land regardless of the tenure classification.

4.15 Power of Eminent Domain

4.15.1 It is possible that land that is held privately is required either for government use or for redevelopment, and that the Government might be inhibited if the required land is not made available when needed for development projects. Therefore, it is necessary to have provisions in the land law giving the Government the opportunity to acquire any piece of land required for public services.

- (a) To prevent possible abuses of the power of eminent domain, the purposes for which the Government may acquire land for any public services shall be clearly stipulated or spelt out.
- (b) Revocation of leasehold rights granted on Government land shall be used to enforce the implementation of expressed and implied development conditions and will be used as an alternative instrument for releasing Government land for development.
- (c) Payment of compensation in the event of the repossession of a leasehold interest on Government land shall be limited to the negotiated value of unexhausted improvements made by the leaseholder and permanently attached to the land.
- (d) No compensation shall be paid for the land when the private use rights granted as a result of the lease is terminated. Government ownership of the land remains throughout the term of the lease.

4.16 Payment of Compensation

4.16.1 The Government has a duty to protect the free enjoyment of legally acquired property rights in land. For that reason, a landholder is entitled to compensation if the owner's property happens to be acquired by the Government for public use. In most cases landowners voluntarily allow their land to be used to fulfill the government's development obligations. However, to be made whole, the amount of compensation paid must be fair and adequate

4.16.2 The notion or belief that customary land has no value has been a big hindrance to offering customary land as a share in negotiations to create joint ventures in various projects. This notion is wrong because land has value as a scarce resource and has other physical and intrinsic attributes that also contribute to its economic and social value.

To reduce, if not eliminate problems often associated with the valuation of customary land at the time of acquisition by the Government, compensation shall be based on the open market value of the land and all permanent improvements on the land.

4.16.3 The inadequacy of compensation is always the direct result of excluding certain items or qualities from the factors considered when determining value and delays in payment of compensation. Hence customary land values are and shall be relevant not only in the assessment of land value for compensation purposes, but also for the assessment of rent, and when offered as an asset in joint ventures.

Land rent payable annually for any land leased by the Government shall be based on the economic value of the land in question. Similarly, the value of customary land offered, as a share and contribution to joint ventures or investment projects shall henceforth be assessed depending on the use, location of the land, and the intrinsic quality of the land itself.

4.17 Regulations Guiding the Disposition of Customary Land

4.17.1 In a growing market economy, the value of real property will be determined under open market conditions. However, customary tenure, in the past, sought to preserve the community's land assets by discouraging sales. Dispositions through the property market occur mostly in the main cities of Blantyre and Lilongwe with minor compliments from Mzuzu and Zomba where freehold and leasehold tenure predominates.

- (a) To accommodate the requirements of Malawi's growing market economy, the Government will take steps to redefine private ownership and disposition of customary land in culturally specific terms.
- (b) To be effective in encouraging land market transactions, communal property regimes will be encouraged to change to accommodate principles necessary for recognizing the exclusive property rights of groups as well as individuals.
- (c) Customary property boundaries shall be demarcated and ownership of

interest defined to effectively lower the time and cost required to complete customary land transactions.

- (d) Formal records of customary land transactions shall be maintained to ensure transparency and accountability.

4.18 Regulation of Customary Land Transactions

4.18.1 Malawi is moving quickly to transform its predominantly communal subsistence economy to a market driven economy based on private property and free enterprise. This exposes most rural families and small holders to the risk of loss by sale and racketeering by unscrupulous persons and real estate agents. In recent times, market driven liquidation of leasehold estates by sale have increased rapidly in rural areas. The bulk of such auctions have occurred in the South and Central regions, although sales in the area around Kasungu are also on the rise.

4.18.2 To protect against the potential loss of customary land by small holders and other vulnerable groups ignorant of their property rights, the Government will assert the following regulations to protect against fraudulent transactions involving customary land:

- (a) Any disposition of customary land, however construed, effectively transfers only the registered usufructuary right of the grantor and cannot transfer the residual property interest vested in the community.
- (b) No disposition of customary land in a Traditional Land Management Area other than rights acquired through a lease or sale of a registered customary estate will be allowed.
- (c) To control speculation in customary land in rural areas and 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 as specified under the section of this policy dealing with the administration of customary land.
- (d) To control speculation in undeveloped peri-urban leasehold plots, no disposition will be allowed unless all the development conditions have been complied with. However dispositions in the form of mortgages for purposes of complying with the development conditions will be allowed.

4.19 Regulation of the Transfer of Customary Estates By a Named Household Member(s)

4.19.1 There are two possibly negative consequences to the titling of family property in the name of the household head. (i) In some cases, these individuals may begin to operate in the land market independently of the other members of the family, and may thereby deprive the family of the benefits of property ownership; (ii) When the person named on the Land Certificate is absent from the household, the family members who actually manage the property will not be able to use the property as collateral or present it as having secure tenure to the land.

- (a) To guard against fraudulent sales of family land and transactions that may adversely affect the welfare of the rest of the family, no sale of a customary estate will be permitted to persons outside the immediate family during the first 5 years of titling a family estate.
- (b) This restriction will not apply in cases of emergency and/or where it could be established by the Headperson and the Customary Land Committee that all named members above 18 years of age have agreed to the sale.
- (c) All transactions involving customary estates during this 5-year restricted period shall require the consent of the Customary Land Committee and the signature of the Traditional Authority in whose jurisdiction the property falls.
- (d) Any sale of a family or group customary estate without express written consent of all persons named on the Land Certificate will be considered invalid.
- (e) These provisions will be enshrined in law.

4.19.2 These safeguards are intended to protect smallholders and rural families against unintended losses of land until the modern concept of marketable private property rights are well established and understood.

4.20 Policy to Prevent Speculative Holding of Land

4.20.1 Granting land tenure security to investors, developers and individual households in urban areas aim to encourage planned development and to ensure a timely and effective utilization of land. Speculative holding of land greatly interferes with the desire of the Government to encourage a fair distribution of land to the users. Speculation also promotes illegal and unplanned development. It encourages urban sprawl, increases the cost of delivering services and creates an artificial shortage of development land. For speculative profits, some landholders

sell their plots when they are still bare or undeveloped or just a short period after acquiring them.

4.20.2 The allocation of development rights to urban land and the encouragement of planned and systematic development of prime commercial real estate in Malawi's urbanizing areas are strategies designed not only to make urban centers attractive to business, they are also intended to improve the aesthetic quality of the built environment and the welfare of citizens. The provisions for preventing land speculation exist under current planning laws but are rarely enforced due to inadequate capacity in the Physical Planning and Development Controls division.

4.20.3 Faced with growing urban land pressure and rapidly rising cost of supplying urban services, the Government will support Local Assemblies in developing the capacity to employ existing anti-speculation and anti-hoarding policies and to employ other methods generally used in other countries to fight this growing problem. This policy may be summarized as follows:

- (a) To control speculation in undeveloped urban leasehold plots, no disposition will be allowed unless all the development conditions have been complied with. However dispositions in the form of mortgages for purposes of complying with development conditions will be allowed.
- (b) Undeveloped urban plots and development that fails to meet building quality standards and required land development intensity will be regarded as speculative development and breach of development conditions.
- (c) All vacant and/or underdeveloped urban land, and development in urban central business districts that fall below building quality standards for their location, will be considered speculative in nature and repossessed without compensation.
- (d) An appropriate schedule of Vacant and Under Utilized Land Taxes shall be developed and enforced by the Government to discourage speculative holding of urban land.

(A list of some of the most commonly used anti-speculation and anti-hoarding instruments shall be supplied as a guide).

4.21 The Social Function of Land Criteria

4.21.1 The social function of land is defined as the most socially desirable use of land considering the location and scarcity value, its physical and environmental attributes and the appropriate land management plan for its effective utilization.

4.21.2 The socially desirable use may be based on **cultural, economic or social consideration**. The cultural and environmental criteria may justify the preservation of sensitive areas, historic, sacred or scenic sites. Similarly, the economic criterion allows land to remain under fallow or uncultivated for a certain period of time due to acceptable practices of particular industries and technology requirements.

1. A parcel fails to meet the social function of land criterion when it is left uncultivated or undeveloped **beyond** what is considered reasonable by customary and/or planning standards or in accordance with leasehold development covenants.
2. The social function of land is used under customary tenure rules to determine when a customary estate reverts to communal ownership for reallocation. The principle will be used to trigger a reversion clause for registered customary estates. It will also be applied when considering issues of neglect, abandonment, underutilization and speculative holding of land.

4.22 Advantages for Enabling Efficient Land Transactions

4.22.1 A priority issue for this land policy is the comprehensive registration and titling of customary land interests in Malawi. From the experience of titling programs elsewhere, the design and initial investment in a Customary Land Titling and Registration exercise will consume a lot of energy and resources. However, once the infrastructure is in place, the benefits far outweigh the cost. Patience and perseverance will be required to achieve the goal of this policy to, once and for all, provide the legal security of tenure that has so long eluded the majority of Malawians.

4.22.2 Statutory recognition of customary estates will place all land on the same competitive footing, as far as their collateralized values are concerned, and will avoid any further cultural and legal conflicts. Once a comprehensive register of property interest has been created, the transaction cost associated with dealing in land will be substantially reduced.

4.22.3 The primary and secondary real estate mortgage markets will have access to large volumes of high quality real property assets with appropriate legal documentation to fund, as the credit and financial markets are expected to do in supporting the nations economic development aspirations.

4.22.4 Successful maintenance of a dynamic and equitable market economy requires the creation of more than just private interests in land. The land market requires new legal and institutional arrangements and policies and programs that lower land transaction cost. In addition, a discussion of what balance is needed between efficiency and equity in the functioning of the market, this land policy framework will address environmental concerns that also require information about alternatives and continuing dialogue among market participants.

5.0 LAND ADMINISTRATION AND RESETTLEMENT

5.1 Land Administration

5.1.1 Land administration embraces such matters as the delivery of land rights, the planning of land uses, demarcation and survey of land parcels, the registration and maintenance of land information. It also includes conveyance, policies to facilitate decisions on mortgages and investment, development management, property valuation for assessment purposes and monitoring the environmental impact of all land based activities.

5.2 Powers of Administration

5.2.1 There are a number of institutions and statutory agencies dealing with land resulting sometimes in confusion over jurisdiction and inadequate policy intervention. For example, the Ministry of Agriculture and Irrigation is primarily responsible for agriculture and the Ministry of Water Development is responsible for harnessing water resources. Similarly, the Ministry of Natural Resources and Environmental Affairs has a duty to manage forest resources, fisheries and enforce environmental regulations. In urban areas, Local Assemblies and agencies such as the Malawi Housing Corporation allocate and manage plots in areas under their control.

5.2.1 The fact that there are so many land sector agencies means their land stewardship duties should be conducted in concert with the land policy objectives of the Ministry responsible for lands.

To reduce if not to eliminate any administrative misconceptions, only one Authority appointed by the President shall be responsible for land matters.

- (a) The powers of administration delegated by the President to the Minister responsible for land matters makes the Ministry of Lands and Housing, the principal authority responsible for land administration in Malawi.
- (b) All other land sector institutions and agencies of the government are functionally specific land based appendages and shall perform their statutory duties in consonant with the policy objectives of the Ministry responsible for lands.

5.3 Administration of Customary Lands

5.3.1 In practice, the allocation of rights to customary land is the responsibility of Traditional leaders. To facilitate these allocative functions, Chiefs actually rely on clan and family leaders to identify and actually allocate pieces of land to

individuals and households from land owned by that group. Once allocated, the family land is held and managed in all respects as private property.

5.3.2 Under section 25 of the Land Act, original title in customary land was removed from Chiefs and community owners and vested in the President in trust for all citizens of Malawi. The Act also gave the Minister responsible for lands the power to administer customary land and to grant leases not exceeding 99 years. The practice even resulted in converting some customary communal land to freehold without adequate consultation with the customary owners. However, because estates were generally allocated to non-lineage members, the process actually undermined tenure security and increased land pressure and conflict among customary landholders.

5.3.3 Most villagers now have a very clear understanding of the security of tenure provided by private and exclusive property rights due to the displacement of communal rights by private estates and the shortage of unallocated customary land.

5.3.4 Because title in land is the primary factor in securing free and undisturbed ownership of land, it is the objective of this Government not only to improve the quality of the title in customary land tenure (as has been done under Section 4.7), but also to place its administrative integrity on a transparent and equitable foundation. To translate this policy into reality:

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| <ul style="list-style-type: none">(a) The present system of customary land administration shall be rationalized and the land management responsibilities of traditional leaders made more transparent and compatible with the land management requirements set out in this policy.(b) The power of traditional leaders to control the allocation of customary land among members of their respective communities, including access rights granted to outsiders shall be democratized and protected by statute. |
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5.4 Protecting the Interests of Customary Estate Holders

5.4.1 This policy recognizes that previous tenure reforms put in place by the state have not been successful because they often fail to consider what the rural population values in regard to land rights. In cases where it has been tried, strict privatization has not improved security, or helped promote producer credit and investment, or encouraged a land market. One reason for the failure is that imported tenure institution's impact on the tenure that rural families are already using.

5.4.2 The nature of the land ethic expressed by customary tenure in Malawi does not require heavy bureaucratic administrative arrangements. The Malawian tenure system generally tends to provide for individual and family land use, and usually gives good security of tenure to small landholders. The customary land tenure

system is also at the core of rural society and expresses the structure of extended social relations.

- (a) For these reasons, the new customary estate regime shall be protected to embody the values of the society it serves and will replace the vacuum created by the Land Act and other related legislations with a new legal framework for administering customary land.
- (b) To safeguard the interest of customary land holders, and to allow time for the new statutory rights to be fully understood by rural land holders, provision shall be made to prohibit the sale of land to persons other than members of the lineage group in the first five years following the establishment of a private customary estate.
- (c) State and international assistance will be sought for a gradual and demand driven surveying of rural and peri-urban land and the establishment of *District Land Registries* to facilitate all land transactions.

5.5 Formalizing Traditional Land Administration

5.5.1 Under the Government program to formalize traditional land administration, the following actions will also be instituted:

- (a) All transactions involving customary land will be required by law to be recorded by a **Land Clerk** in a “Traditional Land Index” to cultivate the habit of recording customary land transactions.
- (b) A procedure for the registration of transactions involving customary estates shall be developed and made compatible with provisions dealing with formal Registration of Interests in Land as stipulated by law.
- (c) A carefully structured training program on Customary Land Administration and Customary Land Records Management shall be developed for training Chiefs and Headpersons, and for certifying **Traditional Land Clerks**.

5.5.2 To facilitate Customary Land Administration Reforms and the protection of private and community land rights, a civic education program for the general public on the principles of trusteeship, the principles of ownership, and concepts of private property law and contracts shall be provided. This program will constitute an essential policy implementation requirement to ensure that the new concepts of property are introduced uniformly and well understood generally by all citizens.

5.6 Policy on Direct Allocations of Customary Land

5.6.1 It is the norm for indigenous citizens of a lineage group or persons belonging to a traditional area to request and receive direct grants of customary land. There are circumstances when Government land allocations are also made by direct grants to beneficiaries. Such allocations become conclusive when registered. Unfortunately, most customary allocations and land actually occupied by most government buildings and public parks have not been properly demarcated or registered to provide conclusiveness to the transaction.

- (a) Direct grants of customary land should be made for residential purposes and for other uses to members of land owning communities contiguous to those resources.
- (b) All grants of land shall be considered safely effected after the subject land has been demarcated and recorded at the appropriate District Land Registry.
- (c) 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 practice will be recognized as granting legal ownership whether registered or not.
- (d) Any grouping of families and individuals living in a locality or having customary land rights in a defined area, that seeks to protect their common property interest or “dambo” shall be recognized and legally protected as common property.

5.7 Gender and Inheritance

5.6.2 As extended families are replaced with nuclear ones, generational conflict and competition for property rights and access to land also increases.

- (a) 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.
- (b) To facilitate the transfer of land ownership through market allocation mechanisms, and to facilitate the transfer of property acquired by parents directly to children, this policy dictates that all children inherit land and real property belonging to parents equally.

5.6.3 There may sometimes exist overriding interests such as long established right of way, access to fruit trees, short term tenants, etc., that must retain their validity, although impossible or impracticable to record. There is also the need to consider other qualifications to customary transaction in land acquired without the need for any payment. In all such cases, whether the interest is registered or not, the grant will also include all existing rights and encumbrances from the person granting the title. Thus, in cases involving transactions in land, it makes good policy sense to require, that before any transaction can be concluded or safely effected, it is necessary to inspect and demarcate the land.

5.7 Land Management Functions of Traditional Leaders

5.7.1 Using methods of field investigation based on the Rapid Rural and Participatory Appraisal, the Customary Land Utilization Study (CLUS) was able to affirm the functional responsibilities of traditional leaders in land matters. This study that involved all major ethnic groups in the country concluded that, although the customary tenure system has changed fundamentally to emphasize individual family rights, the concept of community and the supervisory authority of traditional leaders remain strong.

5.7.2 Normally, Family Heads and Clan leaders of long established families and/or clan landholders are entitled to make individual land allocations. Only when large, extensive and contiguous amounts of customary land are required would the allocation require the decision of a group of traditional leaders.

Traditional Leaders, in the context of this Land Policy, refers to the entire hierarchy of administrators starting from the lowest unit for allocating land, the Family Head, and rising through to the Paramount Chief.

- (a) Village lands are administered in units represented by Family heads, Clan Leaders, Village Headpersons and Group Village Headpersons.
- (b) Traditional land administration involves parcels managed by the Chief of a Traditional Land Management Area.
- (c) The land allocating jurisdiction of the hierarchy of traditional leaders coincides with the politically recognized Traditional Authority system in Malawi.

5.7.3 The traditional allocation system ensures that everyone has a piece of land. CLUS found that 90% of rural households own their land. Of those who have land, 80% inherited the land directly from their parents, 16% were allocated virgin land by the village Headperson and less than 1% purchased the land. Only 3% of rural households were found to be completely landless.

5.7.4 There is no doubt therefore, that the customary allocation system is egalitarian in the sense of assuring direct grants of land to members. This egalitarianism only applies to ethnically related members of the community and others who have settled permanently in the community. The system seriously discriminates against outsiders and does not encourage internal migration to relieve land pressure. Non-members are only permitted to lease land under customary tenancy arrangements that clearly ensures the right of repossession or reversion to the landowners.

5.7.5 Furthermore, the system of inheritance encourages the fragmentation of family holdings. A substantial number of people regularly resort to renting land for cultivation due to land shortages and in situations where fragmented holding have become too small to support viable agricultural enterprise.

- (a) The Government will preserve the land administration and policy monitoring responsibilities of traditional leaders and will encourage reform that support more transparent administration, land resources management and ecological objectives of this land policy.
- (b) The goal is to nurture the human factors the traditional system command (alliance relations, clan linkages) and rights in relation to people, sound land management, and support for civic and community development.
- (c) Customary land administration practices that promote discrimination, abuse of administrative privilege and established property rights of customary landholders will be discouraged and where necessary prevented by law.

5.8 Functions Assigned by Law to Chief's

5.8.1 The Registered Land Act (Cap 58:01), in many ways, diminished the authority of traditional leaders to act independently in matters relating to customary land. Traditional land management decisions were subject to the general or special directions of the Minister, although traditional leaders continued to retain the power to authorize the use and occupation of any customary land within their areas of traditional jurisdiction.

5.8.2 The only serious attempt to define the general role and functions of traditional leaders is found in the Chiefs Act (Cap 22:03). Part II of the Act is devoted to the political appointment and functions of Paramount Chief, Chief, and Sub Chief and the recognized areas of jurisdictions for each Traditional Authority.

5.8.3 Thus, no person shall be recognized as a Chief unless the President is satisfied that the person is fit to be a Chief, and has the support of traditional leaders to assist in the general administration of the District in which his area of jurisdiction is situated.

5.9 Traditional Areas of Responsibility

5.9.1 The Government will exercise caution in the formulation of policies affecting the role of traditional leaders in land management and community structure. Four principal functions categorize the structure of traditional land administration and land resource management. These are:

- 1) Land allocation functions (i.e., land for settlement, land for cultivation, grazing land and land reserved for cultural, historical, and public uses)
- 2) Enforcement of national and community land management policies and advice to the government on traditional affairs;
- 3) Adjudication and land dispute settlement;
- 4) Serving as notaries to land transactions and protecting the community's cultural values and general welfare.

5.10 Land Allocation Functions

5.10.1 The Traditional functions of the office of a Chief under customary law, revolves mostly around land delivery and land dispute settlement. In performing these duties, the Chief serves, not only as an adjudication officer, but also as a witness to transactions involving the allocation and transfer of land by families and individuals. However, no formal arrangement exists to ensure these functions are performed in a judicious and transparent manner.

5.10.2 In practice, traditional leaders allocate customary land. Thus, it makes sense for the Headperson at the Village level or Chiefs at the TA level to serve as the chairperson for Land Committees established at their respective levels.

- (a) The land policy recommends a modified and accountable land administration hierarchy that ties into the decentralized Local Government and District Land Administration structure. The goal is to accord statutory recognition to customary land titles, and to streamline the institutional arrangements for rural land administration.
- (b) This provision shall require the enactment of ***“Traditional Leaders Accountability Law”*** and regulations that will provide procedures for a more democratic, transparent and accountable customary land administration and dispute settlement system.
- (c) Customary Land Committees (i.e., Village Land Committee, Group Village Land Committee and Traditional Land Committee) will be established to oversee the formalization of customary land allocations and general administration of customary land at the Village, Group Village and Traditional Authority levels.

5.11 Actions to Encourage Transparency in Customary Land Transactions

5.11.1 Empowering the community to directly negotiate their own demarcation and to cultivate the habit of recording land transactions can happen only through direct appointment of local bodies with the authority to monitor traditional land transactions. Under the GoM land reform program, the following actions will be instituted to encourage transparency in customary land transactions.

1. The **Customary Land Committee (CLC)** – Headed by the Headperson, will oversee the formalization of family land grants and the allocation of village lands. The Customary Land Committee will be composed of the Headperson and Three (3) recognized and respected community elders (at least one being a woman) who will be elected in accordance with tradition to serve as members.
2. **Traditional Land Clerks (TLC):** A Land Clerk employed by the District Assembly who by qualification should be literate and trained in land tenure issues and competent in basic map preparation will be established at the Chief’s level to maintain a record of land transactions occurring within the TA. An appropriate training program for Traditional Land Clerks will be developed and made available for this purpose.

5.11.2 It is important to note that the appointment of a Land Clerk trained in Land Administration will establish a land policy monitoring capacity in each TA and will provide technical advice on land matters to the members of the Customary Land Committee. The presence of the Land Clerk in the community will also improve information on environmental management, land use planning and basic survey and parcel demarcation to be conducted and monitored more effectively in customary land areas.

To upgrade the quality and the legal integrity of customary land rights, the new policy makes the following provisions:

- (a) A registered Customary Estate will henceforth be recognized as parallel and equal to statutory grants in law.
- (b) Customary estate is defined and interpreted by this policy to mean land vested in an individual, or corporate entity such as a family, clan, or group where land rights depended on membership of the group.
- (c) Where the title to a customary estate is registered in the name of a group, any person acting as a trustee will have a fiduciary responsibility and be held accountable for all actions amounting to a violation of trusteeship.

5.12 Advantages of encouraging transparency

5.12.1 Customary land administration procedures will be made transparent by requiring the approval of the appropriate traditional allocation authority- family head, clan head or Village Headperson. The allocation or grant shall be formalized when counter signed by the an officer representing the Customary Land Committee and witnessed by the signature of the Chief in whose traditional jurisdiction the subject parcel is located.

5.12.2 The rationale behind divesting the allocating authority is to democratize village land allocations and to confer collective responsibility upon the corporate group. The communal ownership arrangement makes the community responsible for development control. It also makes customary land dispositions a matter of public debate within the purview of the village.

5.12.3 The risk of losing common village land when the Customary Land Committee sanctions private allocations for potentially risky ventures is also rendered public. The approval of the Customary Land Committee is equivalent to and shall replace the *Chief's Consent Form*.

5.12.4 Clearance from the District Planning and Land Development Officer shall be required for all publicly funded projects and large commercial and industrial development projects requiring the allocation of customary land. {What constitute "large" will be defined in law}.

5.13 Autonomy and Accountability

5.13.1 The new Government policy does not propose drastic changes in the existing community character of villages. Instead, it recognizes the right of traditional leaders to affirm or deny the village seal of approval to any allocation as their collective responsibility. Consequently, the new policy vests final authority to grant consent to allocate or transfer customary land within a Traditional Land Management area to Traditional Leaders and a democratically elected members of the Land Committee. In short:

- (a) The exclusive authority of the Village Headperson for allocating land will end, and
- (b) Within a registered customary estate direct allocations to family members would not require registration unless the allocation is intended to be permanent of for investment purposes.
- (c) Finally, the traditional system resolves the principal-agent problem by appointing its leader from the community. Headpersons and Chiefs are respected leaders from the community and are expected to make prudent decision.

5.13.2 The proposed reforms are founded on the position that the existing traditional land administration hierarchy should be formalized and made more accountable.

5.14 The functional and administrative role of Traditional Leaders

1. Land Administrative Role:

- a. The new land policy affirms the role of a Chief as the administrative head of a Traditional Authority, and by law authorized to allocate vacant traditional land, and to support land administration functions delegated by customary law to Headpersons and family heads.
- b. TAs will be required to register all land transactions occurring within their jurisdiction, maintaining a Traditional Land Records Storage and Management system.
- c. Chiefs and Headpersons are expected to monitor land transactions by granting Consent to Transfer. They are required to assist the community in their land dealings.

2. Land Management Functions

- a. Land has value and transaction values sometimes approximate market value. TAs will be encouraged to establish estate management offices to collect and account for land revenue due to the community from leases and royalties paid for the use of communal land.
- b. To improve the welfare of the community, TAs will be expected to consult with the communities on needs and priorities, and mobilizing community resources to provide community infrastructure and services to improve the welfare of the community.
- c. Chiefs and headmen will serve as agents of the government for enforcing conservation and environmental regulations throughout the Traditional Management Area.

3. Adjudication and Dispute Settlement

- a. Preside over the Traditional Land Tribunal to adjudicate and settle disputes involving land, property and inheritance.
- b. Perform the duties of a Notary Public with regards to land transactions, wills and inheritance; administer oath and civil justice in accordance with the customs and traditions of the area.

- c. Create and maintain a Traditional Archive of historical and cultural artifacts to protect cultural values, a sense of community and a communal social frame of reference.

5.15 Problems Associated with the Administration of Existing Leaseholds

5.15.1 Leases issued by the Minister are generally of two categories. The first are direct issues in respect of Government Land in urban areas, and the second pertains to agricultural land leases granted from customary tenure. The latter are almost exclusively rural and mainly for commercial tobacco production.

5.15.2 According to the provisions of the Land Act Regulations (GN166 of 1965 as amended by GN 87 of 1986) development controls and covenants for regulating the intended use of leasehold estates are imposed. The standard agricultural lease provides, among other things, that the leaseholder comply with the covenants indicated by the Land Act Regulations and observe rules of good husbandry and sustainable land management.

5.15.3 Unfortunately, public interventions in land use decisions have been and are the most frequent cause of tenure insecurity in Malawi. Although the rapid expansion of agricultural leaseholds contributed to the expansion of tobacco production and export growth, the indiscriminate conversion of customary land into private and exclusive leaseholds estates contributed significantly to the shortage of farm lands especially in Mchinji and Kasungu districts.

5.15.4 The displacement of people due to leaseholds become even clearer when one considers the fact that, unlike the estates, a typical smallholder can operate successfully on 2 hectares and earn good return for producing tobacco. Thus one typical leasehold estate with 400 –500 hectares can easily resettle 200 – 250 small holders.

5.15.5 Many estates, particularly in the North, are heavily encumbered by debt and have ceased to operate. Others were simply abandoned and never actually used. With the decline in international prices for tobacco over the last five years, most tobacco estates have curtailed tobacco production leaving much of the estate to lay uncultivated.

5.15.6 Leasehold tenure arrangements in respect of customary land have not only failed to fulfill the development and investment conditions which prompted their use, they have instead served as the catalyst for worsening tenure insecurity, population displacement and are a source of social and economic discontent.

5.15.7 Compared to the management practices of the tea and sugar estates mostly on freehold land, tobacco leasehold estates were generally found to be in a poor state of husbandry by the Presidential Commission on Land Refrom. The Estate Land Utilization study found as much as 29 percent of leasehold estates underutilized. Covenants were rarely enforced, comprehensive land use planning was rare and land conservation measures were not vigorously followed.

5.15.8 To begin to rectify the tenure insecurity and institutional disruptions created by leasehold on customary land, the Government is committed to the following policy solutions:

- (a) With the coming into force of this new policy, the administration of leases granted by the Ministry out of land belonging to a Traditional Authority will be transferred to the traditional owners. Similarly, the administration and management of urban land leases will be transferred to the respective Assemblies.
- (b) The administration of existing leaseholds may include the collection and disbursement of ground rent and the enforcement of all covenants.
- (c) Lease management will also allow local governments and TA's to use their discretion in determining whether to create and/or renew leaseholds, reassign leases or to revoke and return estates to customary owners for redistribution.
- (d) A comprehensive program to compile and reorganize leasehold records and all supporting documents by location and according to the Traditional Authority will be commissioned to prepare the records for transfer to their eventual District Land Registry Offices.
- (e) Enabling legislation to allow Local Assemblies to administer and or enforce land policy will be enacted before any of the provisions of this policy is implemented.
- (f) The devolution of some authority for implementing land policy to Local Assemblies will not in anyway reduce the central government's statutory responsibility for overall land policy administration.

5.16 Land Administration Capacity Development

5.16.1 Due to the acute shortage of trained and experienced land administration personnel and the poor state of equipment and physical facilities at all the regional land offices, a study to assess the personnel and equipment needs will be undertaken as a precondition for implementing this policy. Funding will be sought to accelerate the construction, staffing and operation of the Regional and District Land Registries, which will also serve as repositories for all Traditional Authority land records. Once completed, the final devolution of leasehold administration to District Assemblies will be completed.

5.17 Policy on Land Redistribution and Resettlement

5.17.1 An appropriate policy and institutional environment is required to motivate long-term solutions for relieving land pressure in Malawi. Because smallholders

grow nearly 100 percent of Malawi's subsistence food crops, they virtually guarantee the country's food security. However, in a modern and diversified economy, it is not necessary or feasible for every person to derive his/her livelihood from the land. Instead, the preferred long-term policy solution to the dwindling supply of arable land is to encourage investment in improved agricultural technology, non-farm employment and production enhancing investments in the farm sector.

In recognition of the critical role of the smallholder agricultural sector to the economy, the policy will ensure that:

- (a) The smallholder sector is guaranteed security of tenure by granting title to customary landholdings to encourage long-term improvements in agricultural productivity;
- (b) The smallholder agricultural sector is assisted in acquiring land-augmenting factors of production and opportunities for adopting production-enhancing technology to sustain efficient and high intensity utilization of land.

5.18 Immediate Need To Relieve Smallholder Land Pressure

5.18.1 The preferred long term strategy of encouraging more intensive land use in the Smallholder sector will, unfortunately, not address the immediate and short-term demand for land in some of the nation's most congested farming districts. Instead, due to political expedience and the immediate need to avert social unrest, particularly in the south, this government will seek support to develop and sustain a land transfer and resettlement scheme.

The Government, after careful review of the current situation, will pursue the following land policy:

- (a) Undertake a land redistribution and resettlement program as a strategy for managing current land pressure and a long-term solution for preventing the emergence of a land crisis.
- (b) Establish a social development fund for providing basic social and economic infrastructure, poverty alleviation and employment relief for households willing to resettle to new homesteads.
- (c) Use the social development fund to alleviate employment and poverty in the districts most severely affected by past conversions to freehold and leasehold estates.

5.19 Land Redistribution and Resettlement

5.19.1 The Ministry has an ad-hoc resettlement policy for helping in emergencies. However, it is estimated that in the most severely affected areas, the average household land holdings has been reduced to less than 0.5 hectares. This has proved inadequate even for subsistence purposes. Recent efforts to acquire and redistribute land by the Ministry revealed that power relationships strongly influence and often disrupt fair and equitable distribution of land to the landless. It is also important that when land is acquired for redistribution, that both equity and efficiency criteria be used in selecting beneficiaries. The most important scarcity factor associated with people's relationship with their terrain as a resource is not land itself, or production values, but the human factors it commands – kinship relations, economic linkages, social network and demographic and ecological preferences. All these factors have to be taken into consideration for a land redistribution program to succeed.

Recognizing the critical role the subsistence sector plays in Malawi's civil society and emerging market economy, it is the policy of this Ministry to ensure that:

- (a) Guaranteeing access and adequate land compels changing the present uneconomic household land holding of less than half a hectare per household to holdings deemed adequate for subsistence and cash crop farming.
- (b) A strategy to encourage the resettlement of landless and land-short households in carefully selected areas throughout the country will be promoted.
- (c) Leaseholds scattered around the country that are considered in excess of established industry requirements, abandoned farms and estate holders who have defaulted will have their rights revoked and the land made available for redistribution to needy smallholder households.

5.20 Strategy for Land Redistribution and Resettlement

5.20.1. A policy to acquire land to resettle smallholders and landless farmers either by negotiation or purchase offers a chance to relieve land pressure and poverty in some of the most congested agricultural districts in the nation. Because the Ministry is the principal administrator of agricultural leaseholds in the country, it is relatively easy to identify expired and defaulting estates that could be repossessed. It is, therefore, unlikely that the Ministry will require huge sums of money to assemble land for redistribution. However, to immediately resettle 3,500 farming households (approximately 15 –20,000 people), the government has

identified 14,000 hectares of land for this one time resettlement project, but it will need at least USD 25 million to accomplish the task.

5.21 Pilot Project To Refine Resettlement Procedures

5.21.1 In order to undertake any systematic redistribution and resettlement policy, the Ministry will need technical assistance and funding support to develop and refine procedures for mass resettlement. A previous feasibility (1998) study for a resettlement project envisioned by the government had suggested establishing a revolving fund to finance the acquisition of land, the physical relocation of settlers and issuing of land and production loans to the settlers. The government would, in addition to its own contribution, solicit international assistance to underwrite this project in the immediate future.

5.22 Land Resettlement and Social Development Board

5.22.1 In a civil and democratic society that abides by the principles of equity and human rights, government cannot force people to relocate to any particular location without their consent. Individuals and households readiness to resettle in a different traditional area, district or region is a matter of personal choice. Attributes worthy of consideration for policy purposes include a person's age, marital status, level of education and ethnicity. The potential disruption of social, cultural and economic existence may be traumatic enough to make the prospect of relocation untenable to some, and the prospect of leaving valuable immovable property is always a cause for resisting relocation. Last but not the least, every resettlement program must address the question of how much will respondents demand to be successfully resettled.

6.0 LAND USE PLANNING AND DEVELOPMENT

6.1 Land Use Planning and Development Controls

6.1.1 Planning relates to all human activities and may be directed to reconcile the social and economic aims of private and public objectives. It is the allocation of land resources in such a manner as to obtain maximum effective use, and at the same time pay attention to the built environment and the welfare of the community. Planning therefore anticipates change, intervenes between the economic, social, political and physical factors that determine the location, form and the resulting outcome of development.

6.1.2 When development occurs in an isolated, haphazard fashion outside a formal planning and development structure, many issues of social or physical design nature too often remain unresolved or allow only short-term solutions that work to the ultimate detriment of the total environment.

6.2 Rural Land Use Planning, Monitoring and Enforcement

6.2.1 The Department of Physical Planning is responsible for land use planning and the enforcement of development controls and standards. The Town and Country Planning Act of 1988 provides the enabling authority for designating planning areas prior to the preparation of any land use planning schemes. However, Planning in the rural areas has been on an ad-hoc basis.

6.2.2 The National Physical Development Plan (NPDP) of 1987 was the first major step towards guiding land use planning in the rural areas. The Town and Country Planning Act, 1988, recognizes the NPDP as a master document for rural land-use planning. The purpose of the NPDP is:

1. To provide a spatial framework for the co-ordination and implementation of development programs and projects;
2. To assist with the development of an ordered hierarchy of rural growth centers and to encourage a balanced pattern of economical use of resources; and
3. To set appropriate standards for the development of services and facilities.

With the coming into force of this policy:

- a. A comprehensive National Land Use and Physical Development Management policy shall be developed and employed as a guide for rural and urban land use and development decisions.
- b. District and Town Assemblies shall be required to prepare Township Planning Schemes for all trading centers and settlements within their

jurisdiction. The schemes shall contain simple land use development proposals and detailed land subdivision plans to guide orderly development of the settlement.

6.3 Effects of Planning Designation

6.3.1 Urbanization is an integral aspect of modern economic and social development. As small towns and service centers transform themselves from rural to urban centers, local authorities have to respond by extending their statutory boundaries and services to abounding areas. However, one of the effects of not extending land use planning controls into areas where land is predominantly under customary tenure is that traditional leaders retain the authority to allocate the use and occupation of rural and peri-urban land. This is often done without conforming to any formal planning scheme.

6.3.2 There is nothing unlawful about development on customary land in rural and urban areas under current law. However, the Town and Country Planning Act considers all development in a planning area without planning permission to be illegal and unauthorized.

- (a) Under this policy, the application of the Town and Country Planning Act shall extend land use and development controls to all rural and urban areas. Such controls should accommodate the needs of physically handicapped or disabled persons.
- (b) Compliance with planning and development law will not require the acquisition and conversion of customary tenure to public ownership.
- (c) Only land required to facilitate the regularization of planning boundaries, density and public health standards, and land required for government and public uses such as parks, transportation and utility easements, etc. will be acquired for planning purposes.
- (d) Compliance with land use planning requirements and development standards will be required and enforced by removing nonconforming land uses and structures erected without the required approval.

6.4 Rural Physical Development Policy

6.4.1 The National Physical Development Plan was prepared to guide the preservation of the nation's agricultural land potential, particularly the best arable lands. The Plan also formulates land use measures to facilitate agricultural and other sectoral developments. It provides a spatial framework for the co-ordination

of sectoral development projects and balances space requirements for all competing uses of land.

- (a) In conformity with NPDP and support to Malawi's economic base, rural physical development planning will ensure the promotion of efficient use of land to meet the demands of the future population.
- (b) To prevent the development of serious land population problems in areas with high population concentrations, land use plans will be prepared with specific guidelines for each rural district.
- (c) To ensure that traditional fishing communities have adequate access to lakeshore areas for fishing operations, special areas will be reserved on the lakeshore for this purpose. Similarly, land use plans will contain guidelines for the location of livestock grazing consistent with agricultural land use
- (d) Villagers will be sensitized during the land use planning process to provide and establish fuel-wood plantations to meet the demands for wood energy. Fragile areas such as steep slopes, wetlands and areas susceptible to flooding will be zoned to prevent or minimize the adverse environmental impact of cultivation and other developments.
- (e) To prevent the undesirable impact of haphazard urban expansion onto prime agricultural land, deliberate controls will be applied to discourage urban expansion to such areas.

6.5 Guidelines for Village Land Use Planning

6.5.1 The concept of village land use planning is not new to Traditional Authorities. However, most rural populations view formal planning and the enforcement of physical planning requirements with some apprehension. To remove this fear and to assure rural community input at all stages of the planning process, the following principles will be employed for planning at the village level:

- (a) Land use planning will be done as a dual process in which the community participates fully by offering local knowledge of their environment and existing land use patterns.
- (b) Land use plans will contain policy guidelines for better use and management of individual and community land resources in accordance with agreed boundaries and degree of planning flexibility. This will be enforceable by law.
- (c) Rural land use plans will involve multi-disciplinary teams of experts in

spatial planning, soil management, crop and animal husbandry, forestry and others and should provide a basis for guiding extension services including land management techniques.

- (d) Rural land use planning should be unbiased by urban planning concepts and should be enacted into law by legislation suitably designed for the purpose.

6.6 Monitoring and Enforcement

6.6.1 Currently land use planning in rural areas is being monitored from the center through the Department of Physical Planning in the MLH. This arrangement is problematic in the sense that there are not enough planners at the center to provide advice on land use in the whole of Malawi. Malawi's Decentralization Policy calls for the establishment of a planning office at the district level that will be responsible for monitoring and enforcing land use planning and policies. To support the decentralization program:

- (a) The existing rural land use planning and development capacity will be reassessed and where necessary redefined to promote local participation in land use decision-making.
- (b) The capacity of Local Governments to manage planned development and to provide services to all areas should be developed.
- (c) The District Planning Office will be required to work with Area Development Committees at the Traditional Authority level, and Village Assemblies at the Group Village Headperson level to ensure rural land use planning.
- (d) Villagers will be sensitized through civic education on collective responsibility for land use planning, environmental monitoring and enforcement of land use policies

6.6.2 At the local level, implementing agencies would require information to monitor physical planning compliance. Monitoring means the ability to detect and help solve problems when they arise. However rural communities and beneficiaries are the best agents for monitoring compliance. The policy guidelines provided include sensitization seminars, workshops and assistance to Community Development Organizations for developing their own systems of monitoring. Previously unavailable information on land allocation by traditional leaders shall be available through Traditional Land Clerks in each TA. Additional support for

district land use planning, monitoring and enforcement of development will provided.

6.7 Lakeshore Physical Development and Land Use Management

6.7.1 Lakeshore recreational areas attract national and international tourists. The popularity of the areas along the shore is due to their easy accessibility from all parts of the country. The attractive beaches of Lake Malawi have already attracted hotel investors and offer good investment opportunities for Malawians. However, public access to the beaches is poor, because the usable shoreline has already been allocated to private cottages, institutions and industry. This has displaced some fishing villages, interfered with access for fishing operations and threatens the livelihood of fishing communities along the lake. The few remaining village clusters along the shore are under increasing pressure to relocate and make room for private development.

To bring order to developments that influence the lakeshore environment

- (a) The provisions of the Development of Lakeshore Plots (Control) Amendment Order, 1996 will be strictly enforced to prevent undesirable uses and to gain control over future development abounding the lake.
- (b) Local chiefs and headpersons will no longer be solely empowered to allocate land. This restriction is necessary to promote, guide and control future tourist/recreational development in a manner least disruptive to local inhabitants and economic activity.
- (c) A special planning and enforcement committee will be empowered by statute to review all current and future development within the controlled area and to establish and enforce guidelines for regulating development consistent with an approved physical development plan. Special fees and taxes will be used to mitigate the impact of lakeshore development on the surrounding communities.
- (d) All existing property rights and development falling within the controlled area will be reviewed for compliance with the lakeshore development master plan and where necessary, regulated, modified and/or removed to ensure compliance with public policy and development objectives.
- (e) Police powers of the state will be applied to remove all nonconforming uses and existing development that prevent the full realization of the approved lakeshore development scheme.

6.8 Urban Land Use Planning

6.8.1 The major urban areas like Blantyre, Lilongwe, Zomba and Mzuzu have *Structure Plans*, which give details of specific urban land uses within the jurisdiction of the urban areas. Smaller urban areas have *Outline Zoning Plans*, which also look into designation of specific land uses within the urban areas. Development Control arrangements are also in place to make sure that development within the urban area is in accordance with land use plan.

6.8.2 Major urban areas and all the designated Town Planning Areas in Malawi have Planning Committees responsible for ensuring that development in the urban areas conforms to the requirements of either the Urban Structure Plan or the Outline Zoning Plans. These Planning Committees rely on expertise offered by their professional planners and the authority granted by statute to extend the urban planning areas into surrounding traditional settlement. In cases where the urban structure plan and the outline zoning plan overlap, the development control arrangement in the planning areas will take charge.

6.9 Conflict between Planning and Customary Tenure

6.9.1 The expansion of existing urban areas and establishment of new towns has long perpetrated the colonial notion that customary land has no value. This notion allowed the application of the Town and Country Planning Act to extinguish customary land rights without adequate compensation. Customary land rights are presumed extinct by the mere declaration of planning areas. No legal procedures are instituted to formally extinguish the customary land rights before the land, presumed to be public land, is allocated to developers under statutory tenure.

6.9.2 Conflicts between statutory and customary allocations in urbanizing areas create the following problems:

1. Uncertainty in the tenure and use of rural land, which is enclosed within the urban boundaries as well as administrative conflicts between the urban authorities and Traditional Authorities of the enclosed villages.
2. Excessive extension of planning areas stretches the limited financial, material and technical resources of urban assemblies over large areas. This lowers their ability to effectively manage planned development and to provide needed services.
3. The traditional sector of the urban area is particularly disadvantaged as they are subject to the by-laws of the planning authority without receiving all the services.

Upon declaration of planning areas, preparation of urban land use and development plans in new areas shall be preceded by the following procedures:

- (a) All interests on land including customary land rights that exist in the planning areas shall be identified and recorded.
- (b) Due process of law shall be instituted to formally extinguish existing land rights in the planning areas that contravene planning requirements.
- (c) All third party interests that exist in the planning areas shall first be cleared before the land is allocated for urban development.

6.10 Housing and Urban Land Development

6.10.1 It is a central goal of Government policy to ensure that the housing delivery system enables all income groups to have access to housing. In these regards, the Government will adopt a decentralized institutional framework, which emphasizes the participation of local authorities, the private sector and local communities as agents for setting local land development priorities. The Government will also ensure that urban land markets operate efficiently and effectively so as to meet the demand for serviced plots by all income groups.

For households in the lowest income group, the main housing intervention will comprise the regularization of land tenure in existing traditional housing areas, the provision of demarcated plots with secure tenure, the provision of basic infrastructure services, and the promotion of income generating activities.

6.11 Urban Traditional Settlements

6.11.1 Most residents in traditional towns live in poor conditions in unplanned settlements. They have no access to basic services and also have no security of tenure. There are many factors that contribute to the growth of unplanned settlements. Some arise from natural population increases, rural to urban migration, costly and bureaucratic procedures for land acquisition, high building standards that are unaffordable to the poor urban majority and laxity in the control of development.

6.11.2 The aim of the Government is to ensure that all urban residents are provided with basic services that are essential to human health.

The efforts of the Government will, from now onwards, be directed towards arresting the growth of unplanned settlements by:

- (a) Timely planning of all potential areas for urban development in the

periphery of towns so as to pre-empt haphazard development. Except for non-conforming uses and housing in hazardous areas, the land rights of residents will be protected through upgrading.

- (b) Designating special areas that will be planned for low income housing with simplified building regulations. These areas shall be provided with services that the residents need and can afford.
- (c) Upgrading plans will be prepared and implemented by local authorities with the participation of residents and their local community organizations. Local resources will be mobilized to finance planning, development and appropriate cost recovery systems.

6.12 Strategy for Controlling Urban Sprawl

6.12.1 Urban planning and building density standards in Malawi are relatively low compared to other countries. As a result, plot sizes for building are bigger than in most countries. Until now, the principle form of building, especially residential building, is the simple single storied structure. This means that each dwelling unit requires a separate plot of land, which contributes to urban sprawl.

All urban land use and development plans will aim at more intensive use of urban land than has been the case in the past. To achieve these objectives, the Government will undertake the following:

- (a) It will revise all space and planning standards to promote more compact form of building in all urban areas.
- (b) It will zone more areas of towns for vertical development.
- (c) Within the Central Business Districts and in the immediate surroundings, vertical extension will constitute the principle building form.

6.13 Renewal of Blighted Areas

6.13.1 The Central Business District (CBD) is a prime area of commercial importance and should be intensively developed. At present, the centers of most towns in Malawi are underutilized. Existing buildings are predominantly simple single storied structures or low-rise residential houses. The pressure for office and commercial space as urbanization accelerates in the centers of towns may cause high land values. In the absence of a policy strategy for managing such situations, there will be haphazard replacement of the existing buildings with high value commercial structures. With the limited use of Capital Gains Taxes, owners of plots in the center receive super normal profits far in excess of the value of their investment.

6.13.2 The Government will ensure that all CBDs and blighted areas of towns are properly redeveloped.

Urban renewal plans will be prepared for all urban centers with the following considerations:

- (a) It will focus on policies to intensify land uses in order to utilize fully the high value of land in those areas, and to capture through appropriate tax instruments, a portion of the surplus value (capital gains) created as a result of public investment in urban development.
- (b) A percentage of the capital gain from the resale of real estate will be paid in the form of a Capital Gains Tax to the Government and the balance will be retained by the owner.
- (c) Existing statute on the taxation of real property will be reviewed and appropriate provisions made to fully implement the requirements of this policy.

6.14 Protection of Public Open Spaces

6.14.1 Sites set aside in urban areas for public activities, including open spaces for recreation, public utilities, sites for schools and other community facilities, are often abused or invaded by private developers to the disadvantage of the general public.

The Government will ensure that:

- (a) Public open spaces, all of Lake Malawi, and other sites for public uses are surveyed and registered as Public Land.
- (b) All sites for public activities in towns shall from now on be registered to appropriate authorities including local Community Based Organizations, NGO's and others who will be required to develop and maintain these sites in accordance with the intended public use.
- (c) Where necessary, user charges may be levied to pay for the costs of installation, operation and maintenance of national monuments and facilities at these sites.
- (d) Protective measures shall be taken to protect environmentally fragile or hazardous areas not suitable for normal forms of development and which require conservation.

6.14.2 Government planning and development officers will be authorized to use police powers to ensure that sites set aside for public activities in towns and urban areas are protected from encroachment by illegal developers and that they are used for their intended purpose.

6.15 Inter-sectoral Coordination of National Land Information

6.15.1 The planning process starts with a review and hence understanding of the present environment to clarify the problems which must be addressed. Planning must be based on land information to give support to land management strategies. For this reason, planning relies on environmental information for defining environmental zones associated with some unique physical, chemical or biological phenomenon. Similarly, information on engineering and utility structures such as the location of water, telecommunication and sewage pipelines is essential for infrastructure. Cadastral information and maps provide information on specific land rights and responsibilities, and can be linked to demographic and socio-economic information for planning purposes. Therefore, an accurate and complete database on land is essential for effective land management in Malawi.

6.15.2 The volume of land information will increase exponentially with increases in urbanization and the formalization of customary estates. This will soon make it impossible to handle land records by the existing manual systems.

In anticipation of the need to modernize land records storage and management systems:

- (a) The Government will henceforth develop an accurate and computerized land information management system with current technology for land records storage and management.
- (b) The staff currently employed and others to be employed will be trained in the essential skills for operating and managing the new computerized land registration technology.

6.16 Malawi Geo-data Information Coordination Committee (MAGICC)

6.16.1 The Ministry of Lands and other land sector agencies are in the process of developing improved resource inventory and data base management systems. However, all such land-based records are by law required to rely on maps produced by the Surveyor General and cadastral records generated by the Ministry of Lands and Housing. Because of the fundamental role that the Ministry plays in setting land policy, and because all the land agencies in Malawi are rapidly moving into the digital age, setting the right standards for coordinating access to land information may soon become problematic if an arrangement for sharing land information is not sanctioned early at the database creation stage.

- (a) To extend rational land use planning to include all rural areas and to facilitate land use planning decisions, a comprehensive and scientific inventory of geographic information will be compiled and stored to create a multiple access Land Information System.
- (b) To coordinate actions by the Ministry responsible for lands with similar aspirations by other land sector agencies, the Ministry shall coordinate the creation and maintenance of a **National Land Information Management System (NLIMS)**. The system should be developed to relate all land information to the same geodetic and cadastral reference codes to sanction and protect public and private property.
- (c) The Ministry responsible for lands shall coordinate the establishment of the **Malawi Geo-data Coordinating Committee (MAGICC)** composed of senior representatives from all land sector ministries and under the direction of the Surveyor General,
- (d) The MAGICC will play an advisory role to help coordinate the creation and maintenance of the National Land Information Management System (NLIMS) and to make arrangements for providing such information to the public and private sectors in a cost effective manner.

6.16.2 The duties of this inter-ministerial MAGICC shall be limited, defined by consultation and included in the regulations.

6.17 Instruments for Enforcing Proper Land Development

6.17.1 Under appropriate circumstances, any one or a combination of land-based tax policies may be employed to enforce land policy. This will ensure land use and development strategies utilized by landholders promote effective and environmentally sustainable utilization of the nation's land and natural resources. The rationale and conditions under which these land policy tax incentives may be employed shall be developed and made available to appropriate enforcement agencies authorized to use them. A short list of such land policy tax instruments is attached in Annex A of this Land Policy.

7.0 SURVEYING, MAPPING AND CADASTRAL PLANS

7.1 Land Survey Purpose

7.1.1 Most Malawians regard land and a home as a fundamental human right. Thus, in an economy that is becoming increasingly capitalistic, tenure security is both a priority and a catalyst for achieving national economic and social goals. Similarly, the need to decentralize land management functions to local authorities is seen as the appropriate level of government to record title, resolve land disputes, plan and implement improvements to the living environment of people. These changed approaches to land policy have implications for the practice and methods of surveying. It requires surveyors to explore community-based approaches and adaptations to land measuring techniques.

7.1.2 Policies and strategies dealing with surveying and mapping for geographical and cadastral purposes also deal with issues relating to the collection of land information for a purpose. Thus when a survey is being planned, the purpose for which it is intended will always be an important consideration. Before any surveying is done in accordance with the Land Survey Act (Cap 59.03) and the Customary Land Development Act (Cap 59.01), the Surveyor General is required to conduct a preliminary inspection involving demarcation and or the preparation of sketch plans.

7.2 Survey Requests and Required Standards

7.2.1 Surveying in Malawi is done by the scientific method known as triangulation. By this approach precise distance and angular measurements are used to fix the boundaries from which a map, parcel plan or site plan showing the precise location of the land can be produced. It is a statutory requirement that land be surveyed to this level of precision before the government will undertake to guarantee property title through the Torrens system of title registration.

7.2.2 The current procedure for demarcation and survey creates an administrative bottleneck in three areas: (1) Sketch plans for agricultural leases are not subject to examination but are treated as survey requests. However, by all accounts, the level of precision required and the cost it entails is far greater than most situations in Malawi demand; (2) The Survey Department lacks the staff capacity to cope with the workload of Cadastral surveying (surveying of plots and farms) required to be performed mainly by Government surveyors; (3) The process causes long delays between the time a survey request from the Ministry is submitted to final approval by the Surveyor General.

To reform the survey requirement to accommodate the growing demand in the country, the following actions will be undertaken:

- (a) The Land Survey Act will be reviewed and amended in the relevant sections to reflect the new approaches to land policy. It requires surveying to explore community-based approaches and adaptations of spatial

information technologies in the practice and standards required for registration.

- (b) Acquisition of modern survey equipment, such as GPS, should be made so that survey services can be done quickly.
- (c) A policy to modify the survey requirements to allow survey requests for public and customary land to be performed under contract by private surveyors will be expanded to alleviate the shortage of government surveyors.
- (d) To support reforms to register all customary estates, programs for training surveyors and survey assistants, planners and land valuation officers will be instituted as a matter of urgency.
- (e) The Government will, in order to undertake any mass survey of the land and to meet current and expected future increases in demand for land surveys, develop survey training and certification facilities to accelerate the pace at which surveyors are trained and certified in Malawi.

7.3 Mapping

7.3.1 The Government is responsible for all basic and control surveys (topographical, geodetic, hydrographic, triangulation) necessary for the preparation of all types of maps. It is also involved in the revision of these maps. Given the high costs of map-making and revisions and the limited resources at the disposal of the government, the Government will support the development of Malawi's digital mapping capability for implementing the objectives set out in this policy along the following lines:

- (a) In order to meet the increased demand for maps, the government will concentrate on the preparation of basic maps such as topographical maps of the scale 1:50,000, 1:25,000, etc. Special projects will be developed for producing cadastral and parcel plans needed for mass registration and other development programs.
- (b) Policy to encourage widespread dissemination of geographic information and digital mapping services in the context of the changing role of government will be developed as a matter of public policy to ensure the benefits can be shared by many people.
- (c) Preparation of other types of maps such as tourist maps, special areas maps, etc., will be left to the private sector and other organizations. However, the Government will ensure that these other agencies operate in accordance with the established laws and regulations.

7.4 International Boundary Demarcation

7.4.1 The international boundary between Malawi, Tanzania Zambia and Mozambique has not been fixed to the complete satisfaction of all parties concerned. As a result, there has been encroachment on land in Malawi by nationals from Tanzania, Zambia and Mozambique in Rumphu, Mzimba, Kasungu, Mchinji and Ntcheu.

Serious effort will be made to complete the establishment of the international boundary between Malawi and Tanzania, Zambia and some parts of Mozambique. The boundary should be permanently demarcated, surveyed and clearly fixed in all sections as a matter of national security.

7.5 Measurement By The Global Positioning System (GPS)

7.5.1 This policy confirms the government's interest in promoting community based land management in concert with the placement of government services as close as possible to the local level. The intention of the Ministry is that each district has its own Land Registry, with the staff and equipment capacity to handle the following areas of responsibility:

1. Allocation of user rights in the case of dedicated government land and recognition and registration of allocations on community lands;
2. Monitoring land use regulations and enforcing restrictions when necessary;
3. Performing development impact assessments and authorizing change of use, subdivisions and other land development management functions;
4. Provide support and facilities for the operation of District Traditional Authority Land Tribunals for resolving land disputes;
5. Prepare land development plans to facilitate local development.

7.5.2 Survey data captured by aerial photography or by GPS receivers provides some of the most cost effective ways of managing land information from traditional settlements and small holder farming areas. Rapid advances in spatial information technology with community participation enhances the speed and relative accuracy by which land information from traditional communities can be integrated with harder scientific survey controls for mapping customary land holdings. A simpler LIS framework designed to allow gradual automation of manual procedures will be used within a participatory framework conducive to meeting the land administration needs of District Land Registries.

Malawi will move towards a unifying land registration system able to accommodate the three principal land tenure systems, Private land including registered customary estates, Public land and Government land by accepting the general application of GPS survey standards for title registration purposes.

7.6 Customary Land Demarcation

7.6.1 Village land survey and titling necessitate the physical demarcation of boundaries. This exercise often increases people's awareness of the value of land and the implications of those boundaries on resource use. In some areas, this has resulted into boundary disputes.

- (a) In order to protect the villager's land rights and promote better and sustainable use of the natural resources within villages, the Government will undertake Traditional Authority boundary demarcation as a necessary public policy requirement.
- (b) The survey plan showing each Traditional Land Management area shall be registered by the Commissioner for Lands and used to verify the legitimacy of all land transactions occurring on land belonging to any Traditional Authority.
- (c) As an essential protection for customary land, a Customary Land Administration and Responsibility provisions will be enacted to enforce the legal and administrative rights of customary estate holders.

7.6.2 As trustees of customary communal land, a map showing traditional land boundaries will assist traditional leaders in land-use planning and land policy administration and cannot be alienated or sold by the trustees.

7.6.3 Similarly, to control individual and family land in villages and to protect it from alienation without consent, customary estate holders will be encouraged to retain a survey plan showing the boundaries of their land and given the opportunity to register their interest. A clear demarcation of traditional lands and individual customary estates will reduce land disputes and further eliminate impediments to individuals who need to invest to improve their land assets.

7.6.4 Customary boundary disputes will be settled at the TA level, with the right of appeal to the resident TA at the district level. A Central Land Settlement Board will resolve any further appeals. Final appeal may be directed to the Supreme Court.

- (a) Individuals should be allowed to commission a survey and prepare deed/cadastral plans of their customary estates to facilitate the registration of individual titles.
- (b) Land areas reserved for communal use, such as areas for forestation, communal grazing land, block or cooperative farming, and other areas set aside for village or communal projects will be respected. The community will be given the authority to protect these areas against encroachment.

- (c) Chiefs and Village Heads, through their Village Land Committees will be allowed to demarcate such common access or public lands and have them registered as public land in order to protect them against degradation and encroachment.
- (d) Less stringent survey requirements will be enacted in law to allow customary land transactions, subdivisions, change of ownership, and inheritance to be registered. This policy will facilitate transparency in the current informal land market in customary estates.
- (e) In order to avoid unnecessary delays in settling traditional boundary disputes, a fixed period not exceeding 90 days will be set within which solutions must be reached.
- (f) Customary land will continue to be vested in the President in trust for the citizens for as long as it will take to survey and register the communal lands of each traditional authority.

7.7 Policy to Avoid Delays in the Preparation of Deed Plans

7.7.1 The Survey Department is responsible for demarcating land holdings for the purpose of issuing leases on Government land. The need to update the division's cartographic capabilities is a priority and will be given the utmost attention in the near future. Changes anticipated by this new policy with regard to the customary tenure sector cannot be achieved if there are delays in the generation of parcel and or cadastral plans.

- (a) To improve the speed without compromising the quality of cadastral plans used for title registration and issuing of leases, the Survey Act will be amended to empower the District Surveyor to certify and approve deed plans to be registered in the Land Registry.
- (b) A deed plan plotted from a subdivision plan intended for attachment to a deed to be registered will not require a new survey, provided the plot or parcel is one of a series of contiguous plots or parcels in a subdivision plan previously surveyed and certified by the District Surveyor.
- (c) To improve the speed and quality of deed and sketch plans required for registration purposes, the use of modern surveying equipment such as GPS will be encouraged.
- (d) The installation of digital mapping capability at all District Land Registries and reliance on geographic information survey procedures should improve access to modern survey technology for practicing surveyors and for accelerating the training and certification of land surveyors.

- (e) Present computer mapping facilities of the Department of Surveys should be updated and expanded to accommodate new technology for handling the cadastral survey and mapping needs of the government.

7.8 Training and Modernization of Department

7.8.1 Although the Survey Department has, in the past, received some training opportunities, these have not always been adequate. An earlier review of the performance of the Division in 1999 concluded the department is understaffed, and has numerous vacancies, some having been vacant for more than two years. The productivity of the Surveys department cannot be expected to improve without an aggressive training and certification program.

- (a) A special project to review the survey needs of the country, professional and technical staffing levels, training facilities and equipment needed to meet the requirements for demarcation and registration of customary land ownership will be developed and funded as soon feasible.
- (b) Training opportunities in Malawi and abroad will be pursued in the immediate term to provide a cost effective avenue for retraining of existing staff, and to provide immediate opportunities for recruiting additional surveyors to meet current demand.
- (c) The Records Section of the Department of Surveys will be computerized and modernized to improve its preparedness to manage the geodetic framework and digital based mapping data for establishing a Land Resource Information System in liaison with other land sector agencies.
- (d) As an immediate short-term measure the present computer facilities of the Department of Surveys will be replaced and the appropriate software supplied to consolidate and enhance productivity.

8.0 TITLING, REGISTRATION AND DISPUTE SETTLEMENT

8.1 Registration and Protection of Property Rights

8.1.1 Land titling in Malawi is currently governed by the Registered Land Act of 1967, (Cap 58.01). Among the principal reasons for the enactment of this law is the weakness in the system of deed registration and the absence of documentary proof of title. Although the Registered Land Act attempts to create titles in respect of customary land in conjunction with the Customary Land (Development) Act, the latter process was applied systematically only to the Lilongwe West registration exercise.

8.1.2 **Deed Registration:** The registration of deeds was introduced in Malawi to record transactions affecting land. This was governed by the Deeds Registration Act (Cap 58.01), and was designed to record copies of whole documents, plans and other evidence of conveyance that may or may not involve the transfer of title. The Central Deeds Registry in Lilongwe is not intended to guarantee title, or correct any defects in the rights being transferred. The Deeds Registry is of far greater importance to businesses, because it shows a complete record of all transactions and liabilities linked in some way to property. All claims, whether private, public and commercial, including liens, wills, probate, mortgages and insurance, etc., affecting the parcel, can be attached. Deed registration is therefore clearly distinguishable from the recording of title to land.

8.1.3 **Title Registration:** The Title Registration system was introduced in 1967 by the Registered Land Act as a simpler and more direct method of recording land ownership in place of deeds. The first requirement of Title Registration is that it is based on parcels of land, precisely defined as a unit to give permanence to the record. That unit of property is what is registered and the ownership identified. Subsequent changes in ownership are then registered with reference to the land itself not as executed instruments (or deeds). Registration provides validity to the transaction since the original proof of ownership acts as a guarantee of the root of the title.

8.1.4 Following the enactment of the 1967 Registered Land Act, Land Registry Offices were established in Lilongwe, Blantyre and Mzuzu to promote progressive registration of titles in Malawi. However, the high volume of high quality records necessary for realizing the benefits of registration has not occurred. The system relies on selective registration of leases granted on public lands and the voluntary requests to register title by owners of private property. 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.

Because of the advantages of title registration for land management, it is the intention of the Government to extend title registration in a comprehensive manner to land owners in all tenure categories by the year 2020. To achieve this goal, the Ministry will pursue the following policy objectives:

- (a) A systematic and accelerated compilation of the register of land ownership shall be arranged as a comprehensive project and funds solicited from the government and the donor community to underwrite the cost.
- (b) The requirements set out under Section 24A of the Land Act in the case of private land transactions will be retained to ensure the Government has the first opportunity to acquire any freehold estate offered for sale.

8.2 Registration of Customary Estates Rights

8.2.1 It is the vision of the Government of Malawi that all citizens should be entitled to have clear and unambiguous title to property, and that such title shall be registered in the District Land Title Registry, pursuant to the Local Government Decentralization Act. Such registration process shall be rapid, efficient, and cost-effective for all participants, whether citizens, government officials, or private enterprises.

8.3 Formalization of Customary Property Rights

8.3.1 One of the goals of any title registry is to formalise the boundaries of properties or land parcels so that it is clear to all exactly what land each parcel contains. This process is generally done in a series of steps beginning with demarcation, adjudication, development of documentation, and registration of the documents.

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.

8.3.2 One of the greatest hindrances to the success of any title registry is the length of time registration requires. If the process is too lengthy or cumbersome, the land purchaser will simply not register the transaction. Likewise, if the cost of such registration is high, people will not register their parcels. The transaction fees paid by citizens should be adequate to support the costs of the registration process.

In many cases, speeding up the process and reducing the number of redundant or unnecessary steps makes the process more efficient and less expensive.

To provide the Title Registry a system for recording customary land rights accurately in relation to the parcel of land, and to insure that all of the rights and encumbrances are recorded in a timely manner:

- (a) A systematic formalization of property rights in customary land will be undertaken under the auspices of the Ministry of Lands and Housing.
- (b) To insure that the process of registration of land parcels and interests therein is as rapid as possible, the government will initiate the process through partnerships with the private sector and the international development assistance community.
- (c) The registration of Traditional Management Areas would be undertaken in a systematic and comprehensive manner and paid for by the government as a public service.
- (d) The Registration of title to customary estates shall be cost-effective and encouraged by establishing a **Revolving Credit Finance System** to bring the cost of the procedure within the means of the majority of rural landowners.
- (e) To ensure the accuracy and reliability of land records maintained by the Registry, all customary, private and public land dispositions, whether by sale, lease, mortgage or grant will be required by law to be registered.
- (f) The statutory mandate for establishing the Revolving Credit Finance System, sources of capital and rules of operation will be defined to support the gradual registration of all customary estates.
- (g) An immediate policy objective is to create and record title deeds from four pilot Traditional Authorities to Pilot Title Registries in each District, and to likewise transition existing records from their current Regional repositories to the appropriate District Land Registries.

8.4 Modernization and decentralization of the Land Registry

8.4.1 Since the passage of the Land Registry Act in 1967, it has been the policy of the Government of Malawi to transfer the existing registered deeds pertaining to land to the Title Registry. Furthermore the new National Land Policy intends encourage systematic registration of customary land areas. This process will be accompanied by determining from existing sources the geographical location of each deed document contained in the Deed Registry, and by assigning the records for that deed to a new Parcel Identification Number to facilitate easy storage and retrieval.

8.4.2 Record keeping is presently done utilizing somewhat standardized manual processes. If the Title Registration Process is to operate smoothly, it is critical that all of the activities, forms, reports, and documents are standardized, and that consistent indexing is done. Standardization of the parcel identification numbering system, and indexing based upon the parcel identification numbers is critical to maintaining the accessibility of large volumes of records.

8.5 Improvement of Work Flows

8.5.1 The initial evaluation of the work flows presently involved in the title registration process concluded that there were numerous redundancies, activities which did not serve useful purposes, and much time wasted through handing offs of documents from agency to agency. Additionally, there is no tracking system for files as they are processed. This causes many files to be lost, and others to be significantly delayed. A defined workflow process and tracking system are essential and should be established to ensure the success of the Title Registry. The objective of improving workflows can be met through the judicious use of automation.

8.6 Coordination of Inter-Divisional Processes for Registration

8.6.1 Coordination among department within the Ministry that work with title documents and cadastral maps must be improved. In order to simplify the title registration process, a means for coordinating the activities of each department must be developed.

8.7 Land Records Storage and Management

8.7.1 Land is a limited resource. Therefore in order to ensure proper management, it is important to know how much land is occupied by whom and for what purposes and how much land is still left for future allocation and development. This is important for planning purposes and for the protection of existing property rights. Current land records are poor because of the following reasons:

1. Land occupied under customary laws is not recorded or registered.
2. Statutory allocations for example National Parks, Game Parks, Forest Reserves, etc., are not registered and as a result many such areas are encroached upon and sometimes alienated out of ignorance.
3. Government allocations (for example land under government building, etc.) are, in general, not registered. Therefore encroachment of these areas is very common.
4. Because of the slowness of cadastral surveys and the legal vetting procedures required in the preparation of title deeds, many allocated parcels

remain unregistered for many years and because of this a number of double allocations occur resulting in many land disputes.

In order to control and maintain a proper and efficient register of land transaction and an efficient system of title registration capable of minimizing present problems of insecurity after an allocation but prior to registration, the government will do the following:

- (a) For leases granted by the government, the Ministry of Lands and Housing will ensure that the grantee gets his copy of the certificate of registered title within 180 days from the date the customer accepts the offer, i.e. by fulfilling the conditions of the letter of offer.
- (b) There should be a registered document for every government land and for all dedicated government properties. Any allocation of government land for private use in urban or rural areas shall be registered at the corresponding District Registry.
- (c) 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.
- (d) A record of land occupied under customary tenure will be maintained at the Traditional Authority Land Records Office and all land transactions registered at the corresponding District Land Registry.

8.8 Manual Registration Procedure

8.8.1 The most obvious shortcoming of existing Title Registration system is the stark absence of technology for speeding the Title Registration process. The entire procedure is manual and time consuming. Simple operations and routine entries that can be handled by a simple desktop computer in a few minutes appear to take a long time to complete manually. The problem is compounded when activities, such as the preparation of cadastral plans, are copied laboriously by hand. The time required could be substantially reduced by making licensed surveyors liable for maintaining the high quality standards already established by the profession in Malawi, and the parcel plan photocopied for plotting against the Cadastral Index Map.

- (a) A strategy to modernize and computerize the land registration system will be undertaken as a matter of priority.
- (b) Skill acquisition training and capacity building strategies outlined in other sections of this policy will be used to ensure a smooth transition from manual to automated registration procedures.



8.9 The Registry's Architectural Layout

8.9.1 The internal layout of the buildings housing the Title Registries are functionally obsolete and cannot be equipped with modern office technology. Due to the inappropriate location, design and layout of the Title Registries in Lilongwe, Blantyre and Mzuzu, efforts will be made to establish new registries in buildings specifically designed for the purpose. This program to modernize the registration system will be regarded as an essential aspect of the goal to establish modern District Registry offices to handle the registration of interests in all of Malawi.

8.10 Delays at the Technical Review Stage

8.10.1 The Ministry of lands and Housing does not have the physical capacity to verify the scientific accuracy of parcel plans submitted with applications for title as required. The Lands Department of the Ministry is required by the law to send all maps and parcel plans to the Surveyor General Department in Blantyre for authentication. This sometimes causes a delay of six to nine months. Second, the section does not have all Index maps and Section-plans necessary for title registration and, therefore, cannot identify the spatial location of some parcels before accepting document for registration.

The Survey Department will be encouraged to contract private surveyors to prepare registration section maps, parcel and cadastral plans and to obtain layouts from the Physical Planning Department in the case of urban and town plots.

8.11 Formalization of Adjudication Procedures

8.11.1 Earlier provisions of this policy restore the powers of customary authorities taken by section 9(1) of Cap 59:01. Under the powers conferred by Sections 6 to 19 of Cap 59:01, customary adjudication procedures are deemed to be a judicial proceeding for the purpose of Chapter XI of the penal code. Procedure in Committee, reconsideration of decisions and Procedure in hearing objections and correction of allocation records in Part V of Cap 59:01 are all designed to bring finality to allocation disputes. This is intended to facilitate the privatization of ownership and will be reconciled and retained with the coming into force of this new national land policy.

The policy recognizes that under Sections 6 – 19 of Cap 59:01, there is a de-facto adjudication procedure currently in place used by Headpersons and Traditional Authorities. These powers will be formalized and restructured to operate through Customary Land Tribunals as defined by this policy.

8.12 Settlement of Land Disputes

8.12.1 It is important to realize that the legal system, although currently pluralistic, may eventually become dualistic and possibly unitary in the future. The structured model recommended by the Presidential Commission, shall be adopted in part to deal expeditiously with land disputes. However, in the final stage, instead of appeals from the District Tribunal of TA's to the High Court, such appeals should lie to a **Central Land Settlement Board** to avoid clogging the High Court with land cases. De-facto procedures for dispute settlement that take off from the customary base and modify the base in light of modern principles of juridical equity, transparency and predictability should be adopted to deal expeditiously with customary land disputes.

The structure of the model for dispute settlement recommended by this policy is as follows:

- (a) 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.
 1. 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. The GVT will comprise of the Group Village Head assisted by four Village Headpersons selected to avoid any prejudice and/or conflict of interest.
 2. **Traditional Authority Land Tribunal** (TALT) will hear appeals from the GVT. The TA Land Tribunal will be presided over by the Chief, assisted by four members of the community selected to include women. At least one member of the TALT should have legal or administrative experience.
 3. Appeals from the TA level should lie to the **District Tribunal of Traditional Authorities** (DTTA) at the District Level. The District Tribunal will consist of all resident TA's, the District Land Registrar, and at least three (3) other members of the District selected to avoid any prejudice and/or conflict of interest by the District Assembly, one of who should have legal experience.
 4. Any appeals from the District Tribunal of TA's should lie directly to the **Central Land Settlement Board** (CLSB), not the **High Court**. The CLSB will also rely on Chapter XI of the Penal Code for deemed judicial proceedings.
- (b) These provisions for dispute settlement will be set out to provide legal finality to dispute settlement by the enactment of statute to be cited as the "**Customary Land Dispute Settlement Act.**" Any unresolved disputes may be appealed to the High Court, which in accordance with the constitution is the final arbiter of all disputes.

9.0 ENVIRONMENTAL MANAGEMENT

9.1 Introduction

9.1.1 Concern over Malawi's environment is not necessarily a recent phenomenon. The recent passage of the Environmental Management Act's and aggressive promotion of environmental education has highlighted the interconnectedness of the environment and humanity. This policy lends support to the policies and strategies currently in place and in the following areas, refers to specific attitudes and practices that adversely impact land-based resource management, and thus, require policy direction.

9.2 Urban Management Of Solid and Liquid Wastes

9.2.1 The management of solid wastes is poor in most urban areas. The burning and burying of refuse which is most common in the rural areas and small towns are unsuitable for high-density residential areas or in the commercial zones. Refuse is often left uncollected in the street corners. When collected, solid waste is crudely dumped in open sites.

9.2.2 The Environmental Management Act governs the collection, separation, transportation and disposal of industrial refuse that may sometimes contain highly noxious chemicals. However, when left uncollected or dumped in open sites, both solid and liquid wastes become breeding grounds for vermin, mosquitoes and other disease vector insects creating grave health hazards and pollution to the urban environments.

- (a) The Government will ensure that urban environments are kept clean and that the polluting effects of refuse do not endanger the health of urban residents.
- (b) City, Towns and District Assemblies will be required to ensure that all solid wastes are promptly collected from all areas of towns. Regulations for the control, collection, transportation and disposal of all hazardous industrial refuse already exist in the Environmental Management Act and should be complied with in affirmation of this land policy.
- (c) The private sector and local communities shall be fully involved in the collection and disposal of solid wastes in towns and in cleaning of local community environments. Civic education to increase community awareness and to promote the recycling of non-hazardous wastes should be encouraged through appropriate incentive schemes.
- (d) All effluent generating industries will, from now on, be obliged by law to undertake pre-treatment of their effluent to environmentally acceptable quality before discharge into drains, or natural water courses.

9.3 Protection of Sensitive Areas

9.3.1 Over the last several years a tendency of allocating sensitive areas like lakeshore land, marshes and village commons to individuals has developed. Once such areas are allocated to individuals, it is always difficult to monitor their use. *Land suitability studies* will be carried out to determine the best use of designated areas to be assigned to appropriate public, private institutions and community based organizations that will be required to take care of them.

- (a) For security reasons, small islands must be protected. Forest and wildlife reserves or seasonal grazing routes of wildlife must also be safeguarded for environmental and habitat management purposes. These areas or parts of them should not be allocated to individuals.
- (b) All of Lake Malawi and other inland lakes constitute a unique natural resource and a national heritage of immense value to the public at large. Consequently, this policy affirms Lake Malawi and other inland lakes as public land under the trusteeship of the state.
- (c) To facilitate public access to all lakes in Malawi, a public easement equal to 50 meters from all points along the shoreline and stretching inland from the high water mark shall be accessible to the public. This restricted zone cannot be privatized by current or future land owners. This provision will be enacted in law.
- (d) *Land suitability studies* will be carried out to determine the best use of designated areas. Where necessary, designated areas will be assigned to appropriate public and private institutions, NGO's and community Based organization who will be required to take care of them.
- (e) Legal and other measures will be taken to prevent building on hazardous and environmentally sensitive areas. These areas will be identified and clearly demarcated in all towns.

9.4 Agricultural Resource Conservation and Land Use

9.4.1 There are growing conflicts between agriculture and other land uses as both human and animal populations increase. Also, the decline in soil fertility because of over use or improper agricultural techniques has encouraged encroachment in forestland, conservation areas, watershed, wildlife and national parks. Ignorance about land carrying capacity and agro-ecological zoning makes it difficult to educate and enforce proper land management practices.

- (a) Land use conflicts will be studied to determine their cause(s) and strategies for resolving them employed. Agro-ecological zoning studies will be undertaken to determine land potentials and capabilities for the whole country
- (b) The government will introduce buffer zones in areas where agriculture conflicts with forestry or grazing land. Where possible, multiple land uses such and agro-forestry will be encouraged
- (c) The agro-ecological zoning will be used to develop a National Land Use Plan and land use management handbooks, and for developing community development action plans for use by civic educators and extension officers.
- (d) Environmentally friendly and sound human activities will be encouraged to preserve wildlife habitat, forest cover for the headwaters of rivers and water catchments areas.
- (e) Sensitive areas like steep slopes, severe gullies, overgrazed lands, shallow soils and semiarid lands, which form fragile ecosystems will be earmarked for conservation.
- (f) Endemic species, critical habitats and wetlands will be studied in order to determine proper techniques of conservation by designated authorities and community caretakers.

9.5 Community Forests And Woodlands Management

9.5.1 The level of environmental damage done through bush fires, poor farming practices, overgrazing, over harvesting of trees and others calls for better management of forests and woodlands. More than 90% of Malawians use fuel wood (firewood) for cooking. The current annual rate of consumption is estimated to exceed the rate at which natural regeneration is able to replenish the stock. Forest clearing for agriculture, fuel wood and for tobacco curing is therefore a major problem and a leading cause of degradation. The need for more land for cultivation, as cultivable land becomes scarce pushes farmers into marginal areas. In most cases the loss of forest products - fruit trees, nuts and dyes, herbal medicine, flora and fauna - essential for human survival affects the communities that most depend on them for income and subsistence. In some rural areas, collecting, processing and selling forest products are the only way by which rural households obtain income.

- (a) Local/village communities should be encouraged to manage forest products locally and be watchdogs to protect community forests and woodlands.

- (b) Community and village development organizations should be encouraged to practice agro-forestry. Cutting of trees on steep slopes, hilly areas and watershed areas should be prohibited unless it is done under strict control and guided by selective pruning for sustainable management.

9.6 Over-dependence on Fuel Wood

9.6.1 There is over-dependence on fuel wood for rural and urban energy consumption despite the abundance of other potential energy sources like wind, coal and solar.

- (a) Steps will be taken to exploit alternative sources of energy to provide and diversify energy sources and minimize the depletion of forests and woodlands for urban and commercial use.
- (b) Programs to involve Communities in safeguarding forest reserves, conservation areas and national parks and to share the revenue derived from them, will be encouraged and supported.

9.7 Forestation Programs

9.7.1 Forestation programs are carried out in areas where the land is highly degraded. Covenants in most leasehold for growing tobacco also include keeping at least 10% of the land as a woodlot. The allocation of lots for tree planting is not common in most rural areas that have adequate wood for timber and firewood. High rate of population growth, the use of wood for flue cured tobacco, and increasing timber export has contributed to deplete the nation's forest reserves and woodlands, thus accelerating the pace of land degradation.

Forestation programs should encourage the use of trees that will improve soil fertility as well as the amount of fodder available for livestock.

9.8 Coordination of Multiple Land Uses

9.8.1 Frequently, licenses or rights and claims such as mining rights, water rights, hunting rights/leases and timber harvesting licenses which usually co-exist with other land use rights are issued without coordination with public authorities and or land owners. For example, hunting rights in the Shire Valley, and fishing access rights in most lakeshore districts, the government's right to mining, even on

private land, community rights to timber and fruit tree harvesting on leasehold estates, have caused serious land use conflicts.

- (a) The government will ensure that permits, licenses, claims and rights for the exploitation of land-based resources are coordinated. Guidelines for natural resource harvesting will be developed in consultation with the issuing authorities.
- (b) Environmental impact assessment studies shall be required before any major land development project is carried out.
- (c) Development activities in fragile ecosystems like wetlands, game reserves, forest reserves and critical habitats will only be permitted after the appropriate authority has conducted an environmental impact assessment study.

9.9 Water Resources and Wetlands

9.9.1 Wetlands are referred to by such terms as wastelands, swamps, waterlogged areas, flood plains, etc., and are thought of as being not useful for social and economic development. However, wetlands serve as breeding grounds for fish, and support a variety of wild birds, animals and plants. The value of wetlands in Malawi has not been studied enough to determine their value as a national resource.

Wetlands will be properly studied and proper land uses assigned to appropriate users and authorities for management.

9.10 Lakeshore Environment Management

9.10.1 The shores on Lake Malawi and other inland water bodies constitute a fragile ecosystem with many unexplored attributes. It has attractive investment potential for locating hotels, industries, settlements and other competing uses. The land use competition and the location of such land uses may bring about marine pollution, beach erosion and depletion of aquatic life. Scattered and largely unregulated lakeshore development is already causing visible damage to the surrounding environment.

- (a) Land based sources of marine pollution shall be controlled rigidly and punitive fines imposed on violators.

- (b) Construction of tourist hotels, residential buildings and recreational activities along the lakeshore shall be regulated to minimize adverse effects on the environment.
- (c) Lakeshore land development shall be done only after an environmental impact assessment study has been carried out.
- (d) A Lakeshore Integrated Development and Management Program will be prepared and enforced to conserve both land and the aquatic environments.

9.10 Mining And Minerals

Quarrying and mining operations in many instances result into environmental pollution or land degradation. For example, sand quarries increase soil erosion in riverbanks and valleys. Stone quarries lead to noise and dust pollution from stone and may result in earth movements. Small-scale brick making operations create open pits and breeding grounds for mosquitoes and relies on fuel wood for curing. Mining of gemstone and precious stones of any kind are prohibited, except under license by the government. However, unregulated mines can be found throughout the countryside, leaving dangerous gullies and open pits everywhere.

- (a) A mining operator will not be granted a mining right or claim without an environmental impact assessment to verify the impact of the activity on the physical environment and health of the surroundings communities.
- (b) Mining rights will include conditions for practicing conservation methods including setting aside funds for compensation to those adversely affected by the activity.
- (c) Mining and quarrying operators will be required to meet the costs of reclaiming land.

10.0 INTER-SECTORIAL CO-ORDINATION

10.1 Sectoral Land Use Policies

10.1.1 The discussion of inter-sectoral relations and appropriate decision-making structures for land management should be considered last, because it is an issue that should be approached only after many of the policy related questions have been answered. Once land is viewed as a scarce resource with uneven quality attributes, the issue of effective monitoring becomes a collective responsibility. Even though the government plans, through appropriate legal or administrative means to enforce its policies and strategies, only a reliable monitoring mechanism will disclose whether the policy guideline work, is defective in some respect, or is being ignored. It is only if it is the latter that the question of appropriate enforcement must be considered.

10.1.2 Development aims to improve the living standards of all people. Considering development is based on land and the utilization of land-based resources, such as water, minerals and energy, and the supply of clean and healthy living space, the condition of the land has repercussions on the welfare of the society. However, compliance monitoring is normally not found in land legislation and because those mechanisms which do exist are usually weak in any event, the subject of monitoring land policy requirements presents other land sector agencies with an opportunity to assist the Ministry achieve its land policy objectives.

10.1.3 The lack of guidance on land, notwithstanding, sectoral land use policies was a void that plagued land use decisions in the past. Indeed in recent times, many of the land sector agencies have reviewed, redesigned and approved new policies for implementation by the government. An attempt to formulate a national land use and management policy has also been made. Several elements are found in the monitoring programs in physical planning, housing, agriculture, environment, forestry, irrigation, and wildlife policies that work to support land policy. In our view, these elements are the basis for forging strong inter-ministerial commitments to land stewardship in Malawi.

10.1.4 It is important to rely on the feedback from land sector agencies and their regulatory processes to inform land use decision-making. Without it, mistakes in planning or implementation are more likely to remain undetected and thus uncorrected. It is in these respects that this land policy and other land sector policy implementation measures are expected to link-up to ensure compliance monitoring of land use and natural resource management.

10.2 Agricultural Land-Use Policy

10.2.1 Perhaps the most important land sector agency whose policies impact lands the most is the Ministry of Agriculture and Irrigation. Throughout the colonial period and well into the year 2000, agricultural development policy in Malawi has always been, and is still dualistic, emphasizing food self-sufficiency in small-holder areas, and capital intensive export production in the large-scale (estate)

sector. Food self-sufficiency in this context was synonymous with self-sufficiency in maize production.

10.3 Poor Agricultural Technology and Land Utilization

10.3.1 The damaging effect of poor agricultural methods and land use practices on the nation's land resources is a matter of grave concern. Agriculture exerts various forms of land degradation; chief among these is high smallholder population concentrations, primitive agricultural technology, soil erosion, and the effects of land clearing and deforestation on the environment. The loss of biomass due to wood harvesting for fuel and tobacco curing alone is estimated at 84,826 cubic meters per annum. The combination of poor agricultural practices, soil and biomass losses, unimproved traditional methods using no, or minimum improved inputs, and no conservation practices, have all contributed to declining productivity in agriculture

10.4 Coordination of Monitoring Programs

10.4.1 Proper land management will be of direct benefit to people whose livelihood depends on agriculture. They, after all, will have incentive to monitor compliance if the benefits provided by participation are well understood. This can be achieved through civic education and coordination of competent monitoring programs.

- (a) To assist the Ministry of Agriculture monitor compliance with agricultural land use management regulations, statutory statements that explains as clearly as possible why agricultural land stewardship fits as an integral part of the entire land policy monitoring process will be emphasized in law as a statement of purpose.
- (b) Under the coordination of the District Planning Officer responsible for community planning at the local level, each government department or other entity represented on the District Development and Planning Committee shall be responsible for monitoring all land related activity which may affect their own area of responsibility.
- (c) A statutory provision that makes each member of the District Development and Planning Committee responsible for land use monitoring will be installed to encourage broad monitoring effort.

10.5 Other Sectoral Land Use Policies

10.5.1 Agriculture is and will remain the major land use category for a long time to come. Nonetheless, Malawi has not ignored other land use sectors. The

Government has in recent years, published a number of important policies. These include:

- The National Land Use and Management Policy;
- The National Environment Policy and Action Plan;
- The National Forestry Policy;
- The National Irrigation Policy and Development Strategy;
- The National Housing Policy; and
- The National Physical Development Plan.

10.5.2 All these public sector agency policies have something to say about land. The policy prescriptions have been made entirely consistent and capable of supporting this National Land Policy. The National Physical Development Plan will be enforced in coordination with the comprehensive Environmental Management Policy and law to extend land use planning to all rural and urban areas. These policy documents are the result of attempts by the government to set goals for land sector operational mandates.

With the recent coming into force of sectoral policies and laws relating to land and land based resources, this Ministry is of the view that:

- (a) Following the promulgation of this new land policy as the basic policy framework on land, the Ministry responsible for lands will propose an internally coherent and co-ordinate scheme for the implementation of land sector policies. It will also encourage broad interpretation of their land stewardship mandates to ensure positive results.
- (b) This policy supports the comprehensive environmental management plan currently in force, and all the statutory powers of enforcement approved as a basis for the sustainable management of Malawi's land and land-based resources.

10.6 Closing Statement

10.6.1 The National Land Policy focuses on land as a basic resource common to all the people of Malawi. In this regard, the Government has an obligation to offer equal protection under the laws of the nation for the acquisition, use and enjoyment of land by all citizens within the social and economic realities of the country.

10.6.2 These policy prescriptions offer opportunities to achieve, in a reasonable and sustainable manner, economically feasible and socially compatible solutions to most of the land problems that hinder national development. In addition, provision has been made for appropriate support measures to secure customary tenure rights and to assist ordinary landholders to exercise and enjoy secure rights in land.

10.6.3 Changing land use patterns, demographic and economic conditions have a substantial impact on the nation's land resources. It is important that the depletive

effects of human activities on the ecosystem be effectively countered by policy incentives to conserve land resources in the interest of the present and the future generations.

10.6.4 In these and other regards, this policy represents an important turning point in the history of Malawi and it is the hope of the government that this monumental undertaking will promote economic progress and prosperity to all citizens.

Annex A

LAND POLICY TAX INSTRUMENTS

- 1. Registration Fees and Transfer Taxes:** Land policy goal in Malawi is to encourage registering the proprietary interest in land without displacing traditional authority patterns. However, the transfer duty tax works only when transfers are registered or recorded. Where no real value is attached to title registration, transfer taxes plays no land policy role.
- 2. Capital Gains Tax:** These are land-related when they are applied to land gains. Owner-occupied residences are often exempted or taxed at a lower rate. As the pace of land market transaction increases with the privatization of the economy, capital gains tax will increase local authority revenues form own sources. Capital Gains Tax may discourage land speculation if punitive rates are imposed. However by lowering the tax as length of tenure increases, it encourages conservation.
- 3. Development Gain Tax and Land Increment Tax:** These are all taxes on the increases in land value due to permission to use land for particular purposes which could be as a result of rezoning or public investment in infrastructure. These taxes are generally imposed at the national, rather than the local level. However, local *Development Permits* may be used to ensure compliance with development standards.
- 4. Environmental Impact Fees:** This is a fee generally assessed and collected by the planning and environmental management department of a local government to pay for anticipated impact of development. If anticipated impacts of a development are extensive, local governments can require mitigation through payment of an impact fee (Mitigation can also be made in other ways as discussed below).
- 5. Vacant and Under Utilized Land Tax:** There are effectively two types of vacant land taxes. The first provides that vacant and under utilized land is taxed on the basis of full market value rather than current use value. A second method used is to tax vacant land at higher rates than other classified uses of land. Vacant land taxes are generally used as anti-speculation and anti-hoarding devices to stimulate development.
- 6. Exaction Fees -** An exaction fee is a requirement placed on developers to help supply or finance the construction of public facilities or amenities made necessary by the proposed development, such as infrastructure, parks, or schools. State and local governments have expanded the concept to allow fees in lieu of land dedication and/or the building of a facility.
- 7. Planning Gain, Developer Fee:** These charges are negotiable between developers and municipal planning officials and are most often used in areas of high land demand and increasing land values. They are fees to gain the exclusive right to develop a specific project.

8. User Charge: The charge is an attempt to capture the value of the benefit of public services and often include the capital costs and/or connection costs of providing public utilities. User charges fall into two categories: (1) consumption-related and (2) benefit-related. Typical consumption-oriented user charges include those for water, sanitation, and electricity.

9. Special Assessment: Special assessment taxes are generally used to finance infrastructure or services provided by government. Special assessments are useful in two types of situations: (1) when there is a one-time cost that is beyond the scope of tax devices already in place, or (2) when the "natural" area for providing infrastructure or a specific service does not follow established jurisdictional borders. Rather than a charge based on usage - a user charge, the district served by the service infrastructure is defined and costs of the infrastructure or service are levied across the district on a one-time or continuing basis.

10. Linked Development Fees: A linkage payment is a monetary charge instead of provision of facilities or services. It is a requirement that a developer, who intends to build X, must also build Y. Linked development is a mechanism of land use regulation that requires or entices developers of certain classes of land use to construct or help local authorities finance the provision of public facilities. For example, reforestation, recreation facilities, clinics and some "affordable" housing and the provision of some community amenities, can be required as a condition for permission to build or extract some special development advantage.