

KAS Sensitization Training Workshop for Traditional Leaders in Zomba  
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# NEW LAND LAW VS. WOMEN LAND RIGHTS - OVERVIEW

PRINCIPAL LAND LAW;  
CUSTOMARY LAND ACT  
REGISTERED LAND (AMENDMENT) ACT  
LAND ACQUISITION ACT

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# Preamble

- Malawi has reached a critical juncture in its land reform ambitions. A number of laws have recently been enacted which were first proposed in the National Land Policy of 2002

- The ten are:
  - i. Land Act 2016
  - ii. Physical Planning Act 2016
  - iii. Land Survey Act 2016
  - iv. Customary Land Act 2016
  - v. The Registered Land (Amendment) Act 2016
  - vi. Public Roads (Amendment) Act 2016
  - vii. Forestry (Amendment) Act 2016
  - viii. Land Acquisition (Amendment) Act 2016
  - ix. Local Government (Amendment) Act 2016
  - x. Malawi Housing Corporation (Amendment) Act 2016

- The first four have already been assented to by the State President. The other six are still pending Presidential Assent.
- Bills that are still being developed and will form part of the Land Law include:
  - i. The Mines and Minerals Bill
  - ii. Land Use and Management Bill
- Significantly, the Customary Land Act allows the creation of Customary Estates, so that smallholder farmers in Traditional Land Management Areas (TLMAs) can get legal title to their land and thus be protected from encroachment and other interests including those of Traditional Authorities. Also, the Registered Land (Amendment) Act provides for the legal Registration of Customary Estates.

# Notable provisions

- Notable provisions in the Principal Land Act  
Sections 2, 7, 8, 9, 11, 17, 18, 19, 20, 21, 37, 38,  
45, 47
- Notable provisions in the Customary Land Act  
Sections 2, 3, 4, 5, 6, 7, 8, 10, 14, 15, 17, 20, 21,  
22, 23, 24, 26, 27, 28, 29, 30, 34, 36, 37, 43, 44,  
45, 46, 47, 48, 49, 50, 51, 52, 53.

# Notable definitions: LA2

- “Traditional land management area” (TLMA) means an area demarcated and registered as falling within the jurisdiction of TA.
- “Customary estate” means customary land owned, held or occupied as private land (registered under the Registered land Act)
- “Customary land” means all land used for the benefit of the community as a whole and includes unallocated customary land within the boundaries of a “Traditional Land Management Area”
- “Private land” means land which is owned, held or occupied under freehold title, leasehold title or customary estate.

# Definitions (continued)

- “Public land” means land held in trust for the people of Malawi and managed by govt. a local government authority or a Traditional Authority, i.e. any land held by government or local government authority; land acquired and privately owned by government or local government authority (e.g. government buildings, schools, hospitals, public infrastructure); national parks, forest reserves, recreation areas, historic and cultural sites; land vested in government as a result of uncertain ownership or abandonment; unallocated and communal land within a TLMA

# Vesting of land

- Section 8 PLA

“All land is vested in Perpetuity in the Republic”.

- Departure from the 1965 Land Act that vested Land in the President.



# Categorization of land

- Section 7: LA
  - Public land (Government land or unallocated customary land).
  - Private land (Freehold, Leasehold or customary estate).

# WHAT HAS CHANGED

- Definitions have changed
- Vesting of land has changed
- All land is subject to planning
- Registration of customary land into customary estates

# Gender inclusive provisions (What changes affect women in Malawi?)

- CLA - S 5 (2) – Composition of Land Committee;
- “A Land Committee” shall consist of:
  - a. A group village headman who shall be the chairperson of the committee
  - b. Six other persons elected by and from within the community, at least three of whom shall be women (Issue – Need Women of influence, especially in patriarchal society where a woman does not speak in presence of a chief)

# Gender inclusive provisions (What changes affect women in Malawi?)

- CLA – Sec. 44 (2): Dispute Settlement
- “A Customary Land Tribunal” shall consist of:
  - a. A presiding chairperson who shall be a Traditional Authority responsible for the area;
  - b. Six members of the community **nominated** by the Traditional Authority and approved by the Commissioner, at least three of whom shall be women (**Issues – (i) nomination by TA; (ii) Women of influence; (iii) In patriarchal society where a woman does not speak in presence of a chief, women of influence may not be nominated by the Traditional Authority. This calls for vigilance**)

# Gender inclusive provisions (What changes affect women in Malawi?)

- CLA - S 20 “A customary estate shall be allocated by a CLC to:
  - a. a citizen of Malawi or a family of citizens of Malawi  
(Issue - joint registration is optional. Need to step up campaign for women in patrilineal societies)
  - b. a group of two or more citizens of Malawi whether associated together under any law or not or;
  - c. a partnership or corporate body the majority of whose members/shareholders are citizens of Malawi

# Gender inclusive provisions (What changes affect women in Malawi?)

- CLA Sec. 20 (2) “A customary estate shall be:
  - a. of an indefinite period/duration,
  - b. Inheritable and transmissible by will.
- CLA Sec21 –
- (1) “A person, family unit, a group of persons recognised under customary law or who have formed themselves together as an association, a cooperative society or as any other body recognised by any written law, may apply to a land committee responsible for that land for the grant of a customary estate.
- (2) “An application for a customary estate shall be –
  - a. In a prescribed form
  - b. Signed by the applicant(s)
  - c. Accompanied by a fee if applicable or any other required information

# Gender inclusive provisions (What changes affect women in Malawi?)

- S 22 CLA- Security of tenure
- (1) A Land committee shall within 90 days of receipt of an application for a customary estate or within 90 days of the submission of further information determine the application
- (2) in determining whether or not to grant a customary estate, a land committee shall:
  - a. comply with decisions that have been reached by relevant authority on the adjudication of the boundaries to and rights in the land which is the subject of the application for a customary estate
  - b. Have regard to any guidance from the Commissioner concerning

# Gender inclusive provisions (What changes affect women in Malawi?)

- c. Have regard to equality of all persons such as
  - i. Treat an application from a woman or a group of women, a person with disability or a group of persons with disability no less favorably than an equivalent application from a man, a group of men or a mixed group of men and women
  - ii. Adopt or apply no adverse discriminatory practices or attitudes towards any person who has applied for a customary estate.



# Gender inclusive provisions (What changes affect women in Malawi?)

- CLA - S 28 (2) Disposition of customary estate
- “A disposition of customary estate granted to a person or family unit shall not be permissible outside the immediate family during the first five years of titling of the estate”

# Gender inclusive provisions (What changes affect women in Malawi?)

- CLA – Sec 28 (3) The restriction under (1) may be waived in cases of emergency or all dependents or named members of the family are over 18 years old and have agreed to the disposal
- CLA - S 28 (4) “A sale of customary estate which was granted to a family unit without written consent of **all** persons named on the land certificate shall be invalid.

## Sec 29: SURRENDER OF CUSTOMARY ESTATE

- CLA Sec 29(1): A person, family unit, group of persons holding a Customary Estate may, subject to this section, at any time, surrender the Customary Estate.
- (2) A surrender under this section which has, or for which it is reasonable to deduce that its purpose or effect is to deprive, or place impediment in the way of a woman from occupying land which she would, but for that surrender of land, be entitled to occupy under Customary Law or otherwise shall not be a valid surrender.

- CLA Sec 29(3): A surrender of a Customary Estate which has or for which it is reasonable to deduce that its purpose is the fraudulent, dishonest or unjust deprivation of dependents who are below the age of 18 years shall not be a valid surrender.

# Abandonment of customary estates

- CLS -Sec 34 – abandonment
- (1) A customary estate shall be taken to be abandoned where
  - a. The occupier has not occupied or used the land for any purpose for which the land may lawfully be occupied and used including allowing land to lie fallow for five years or more
  - b. The occupier has left the country without making arrangements for any person to be responsible for the land and for ensuring that the conditions subject to which the customary estate was granted are complied with and has not given appropriate notification to a land committee

# Abandonment of customary estates

- (2) In determining whether a customary estate has been abandoned in terms of sub-section (1)
  - (a) the land committee shall have regard to:
    - a. The means of the occupier of the land and where the occupier is an individual, the age and physical condition of the occupier
    - b. The weather conditions in the area during the preceding three years
    - c. Any advice on the matter sought by the land committee or given to it by the Commissioner

# Compensation

- Read LA Sec 17.
- LA Sec 18: A person who by reason of :
  - a. Any acquisition made under section 17 (1) or
  - b. The temporary use and occupation of customary land under sec. 17 (2) or (3)suffers any disturbance of or loss or damage to any interest which he may have or immediately prior to the occurrence of any of the events referred to in this section may have had in such land shall be paid such compensation for such disturbance, loss or damage as is reasonable.
- Reasonable compensation for loss/damage to interest in land prior to occurrence of disturbance

# COMPENSATION

- (8) The customary land shall be transferred subject to
  - a. Payment of appropriate compensation as assessed by a registered valuer and agreed upon between:
    - i. The land committee and the commissioner
    - ii. Where sub-sections (4) and (10) apply, the persons referred to in those sub-sections and the commissioner



# COMPENSATION

- b. If govt. or reserved land is to be exchanged with customary land which is the subject of the transfer, government will identify an alternative piece of land to be transferred to the traditional land management area or the affected persons as the case may be
  - (11) The minister may direct that any compensation payable under this section shall be paid by the person to whom or an organization to which the customary land has been transferred to and is granted under a lease.

# COMPENSATION UNDER Land Acquisition Act

- Sec. 10.
- (1) Unless otherwise agreed between parties appropriate compensation shall be assessed by an independent valuer appointed by the minister.
- (2) Assessment of compensation ...

# Management and administration of customary land

- CLA - Sec 8 - Land clerks- Serve as secretary to any land committee
  - Shall be employee of local govt. authority
  - Qualifications- MSCE, trained in land tenure management, competent in basic map preparation and land use planning.
  - Duties- survey work, basic map preparation, maintain a register of all land transactions with TLMA, prepare land use plans, provide technical advice on land matters and monitor compliance with relevant land related Acts.

# Management and administration of customary land

- CLA Sec 10- Complaints concerning mismanagement of CL by land committee- lodge complaint with local govt. authority who will report to commissioner for action.