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WASHINGTON DC, MARCH 16-20, 2020



Opportunities and Challenges of Land Reform Implementation in Malawi

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**Paper prepared for presentation at the
“2020 WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 16-20, 2020**

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Abstract

The National Assembly of Malawi enacted a Customary Land Act in 2016. This law enables smallholder farmers to convert their customary land rights to private land rights with registered title. The implementation of the new law is currently being piloted in three locations in Malawi, which have different approaches to land rights, e.g. patrilineal or matrilineal traditions. A low-cost methodology using high resolution satellite images is being trialled at village level. Customary Land Committees have been elected at village level, which has given local ownership of the process. Staff on short-term contract have been recruited, and trained by staff from the Ministry of Lands. Systematic adjudication and demarcation of the land parcels has been done, followed by a public inspection held in the village where claimants can agree or object to the provisional results. So far results have been very encouraging. Donor commitment is being sought to enable roll out of the work countrywide.

Key words: customary land, land reform, low cost methodology



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Abbreviations

AgriComm	Agricultural Commercialisation Project funded by a World Bank loan
CE	Customary Estate
CLA	Customary Land Act
CLC	Customary Land Committee
DLR	District Land Registry
EU	European Union
GSD	Ground Sample Distance (average size on the ground of each pixel in a satellite image)
HRSI	High Resolution Satellite Image
MoLHUD	Ministry of Lands, Housing and Urban Development
NLP	National Land Policy of 2002
PI	Public Inspection
QC	Quality Control
TA	Traditional Authority (a Chief)
TLMA	Traditional Land Management Area
UPIN	Unique Parcel identification Number
WB	World Bank



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1. Introduction

In 2016 the Parliament of Malawi enacted a Customary Land Act (CLA). The CLA enables smallholder farmers to convert their customary land rights to private land rights with registered title; these land holdings are known as Customary Estates (CEs). CEs are of indefinite duration, inheritable and transmissible by will. CEs can also be created for the land of organisations such as churches. Communal land must be demarcated to avoid encroachment and protect the rights of the local community. The CLA will give land holders increased tenure security, which should lead to investments in land improvements. Land Holders are not forced to apply for Customary Estates to be created; the process is voluntary. This law provides the opportunity for poor farmers to have strengthened land rights and thus an incentive for investment in land improvements.

2. Background

Malawi National Land Policy

Moves to strengthen the Customary land rights of small holder farmers can be traced back to the Malawi National Land Policy of 2002. The NLP (section 5.12) states the need of:

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

The Customary Land Committee (CLC) – Headed by the Headperson, will oversee the formalization of family land grants and the allocation of village lands.

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.

New Land Related Legislation

This National Land Policy took considerable time to result in the legislative changes required. However, in July and November 2016, the Malawi National Assembly (Parliament) passed the following new or amended land related laws.



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During the July 2016 sitting the National Assembly enacted the following Bills:

- i. the Land Bill
- ii. the Physical Planning Bill
- iii. the Land Survey Bill
- iv. the Customary Land Bill

The following Bills were enacted during the November 2016 sitting of the National Assembly:

- v. the Registered Land (Amendment) Bill
- vi. the Forest (Amendment) Bill
- vii. the Malawi Housing Corporation (Amendment) (No.2) Bill
- viii. the Public Roads (Amendment) Bill
- ix. the Lands Acquisition Bill
- x. the Local Government (Amendment) Bill

It is the Customary Land Bill, enacted in July 2016, which has paved the way for the most significant land reform in Malawi, and which is the focus of this paper.

Further Legal Drafting

However, before the requirements of the CLA could be implemented, regulations had to be drafted which defined the details of implementation. These were drafted during 2017-2018, finally being ‘gazetted’ and therefore coming into force on 20th April 2018.

In addition, an Operations Manual for training and reference during pilot implementation was written during the latter half of 2018.



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3. Timetable of key events

Date	Event
January 2002	Malawi National Land Policy
July 2016	Customary Land Act enacted by Malawi Parliament
7 April 2017	Sensitisation in preparation for pilots begins
20 April 2018	Customary Land Act Regulations gazetted
December 2018	Training & Operations Manual completed
11 February 2019	Training for first pilot in Phalombe District begins
25 March 2019	Training for second pilot in Kasungu District begins
9 September 2019	Training for third pilot in Rumphi District begins
15 September to 14 November 2019	Public Inspection for Phalombe District Pilot
30 September to 29 November 2019	Public Inspection for Kasungu District pilot
23 January to 23 March 2020 ¹	Public Inspection for Rumphi District Pilot

4. Piloting the Customary Land Act

Donor funding

As the Customary Land Act is a new venture in many ways, it was decided to pilot the law's implementation before considering a large scale roll out. So, in order to test and refine the implementation of the CLA, the law is being piloted within two donor funded projects:

- a) "Strengthening Land Governance system for smallholder farmers in Malawi" funded by the European Union (contractors Oxfam Malawi with CEPA² with Technical Assistance from DAI Europe)
- b) "Agricultural Commercialisation" (AgriComm) funded by a World Bank loan

There are three and six pilots respectively implemented by these two projects.

¹ By law the Public Inspection has to last for 60 days (CLA section 39)

² CEPA = Centre for Environmental Policy & Advocacy, Blantyre



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Currently (February 2020) there are three pilots completed or in progress within the EU funded Land Governance Project:

District Name	GVA	Region	Start of field work	Notes
1. Phalombe	Maoni	Southern	February 2019	Matrilineal
2. Kasungu	Ching'amba	Central	March 2019	Matrilineal & Leases common
3. Rumphi	Chimalabanthu	Northern	September 2019	Patrilineal

The other six pilots within the AgriComm project are planned to start in 2020. These pilots are:

District Name	Region	Notes
1. Karonga	Northern	Patrilineal
2. Rumphi	Northern	Peri-urban
3. Nkhotakota	Central	Matrilineal and leases common
4. Mchinji	Central	Matrilineal & leases common
5. Chikwawa	Southern	Matrilineal
6. Nsanje	Southern	Matrilineal

Choosing the Pilot Areas

The contract to implement the first three pilots was awarded by the funding Agency, the European Union, to a consortium of local NGOs led by *Oxfam Malawi*. A parallel contract was awarded to *DAI Europe*, whose technical assistance team had the knowledge and skills to advise Oxfam and their partners on the technical aspects of the work, and to support the Ministry of Lands in drafting the required legal regulations.

Due to the European Union's contract terms, each pilot was required to include the land of 1,000 households, based on a Group Village Area³ (GVA). This was not a good idea, as GVAs inevitably never contain exactly 1,000 households; most have more than 1,000 households, some considerably more. This meant for example that in the pilot in Phalombe District, only 84% of the GVA was completed, leading to

³ A Group Village Area (GVA) is the smallest administrative unit in Malawi. It contains several villages and their surrounding agricultural land. Malawi is divided into 3 Regions, 28 Districts, several hundred Traditional Land Management Areas (TLMAs) and a number of GVAs in each TLMA.



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dissatisfaction of the households not included. This is a lesson for funding Agencies to define contract areas by whole administrative units and not numbers of households.

There was also a need to choose pilots areas which varied in terms of the cultural context. The pilot sites have been selected to cover different parts of Malawi and have different traditions and backgrounds of land holding, e.g. patrilineal, matrilineal, and the existence (or not) of leasehold agricultural estates.

However, there has been some resistance to the new Customary Land Act in Mzimba District in Northern Region. The Ngoni tribe in Mzimba have particular traditions and are strongly opposed to any attempt to give land rights to Women. This has resulted in the site of the pilot in Northern Region being moved to Rumphi District. Local buy in is essential to success and this may not be possible everywhere. However, if the granting of Customary Estates is successful in most of the country, it may put pressure on any non-participating areas to comply.

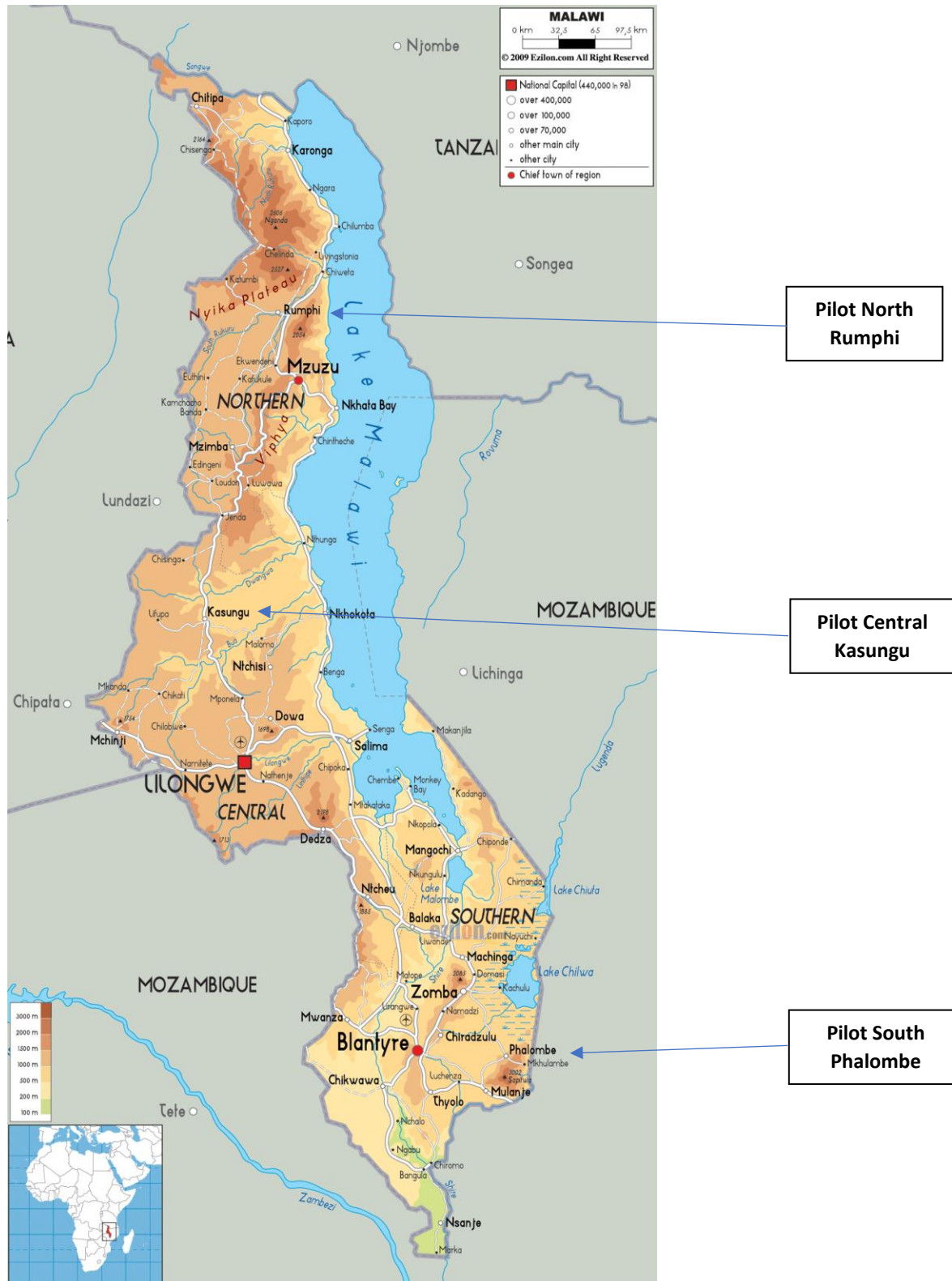


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5. Map of Pilots' Location





6. Customary Land Act Implementation Process

The following are the stages in the pilot projects' implementation process:

- i. Sensitisation and public awareness about the CLA and its associated regulations, and how the pilots will be conducted
- ii. Adjudication and demarcation of Traditional Land Management Area (TLMA) boundaries
- iii. Employment of a full-time Land Clerk for each TLMA
- iv. Election of group village level Customary Land Committees (CLCs)
- v. Establishing Customary and District Land Tribunals
- vi. Recruitment and training of contract staff for field and office work
- vii. Systematic adjudication and demarcation of land parcels
- viii. Office data processing to produce a Geographic Information System (GIS) containing land parcel boundaries and parcel attributes
- ix. Development of a local land use plan for each GVA by public participation methods
- x. Public display of provisional results showing parcel boundaries and attributes
- xi. Corrections to provisional results following Public Display
- xii. Production of ownership certificates and parcel maps
- xiii. Registration of land rights in (to be established) District Land Registries
- xiv. Issue of certificates and maps to land holders

These procedures are shown in the workflow diagram on the next page, and then explained in more detail.

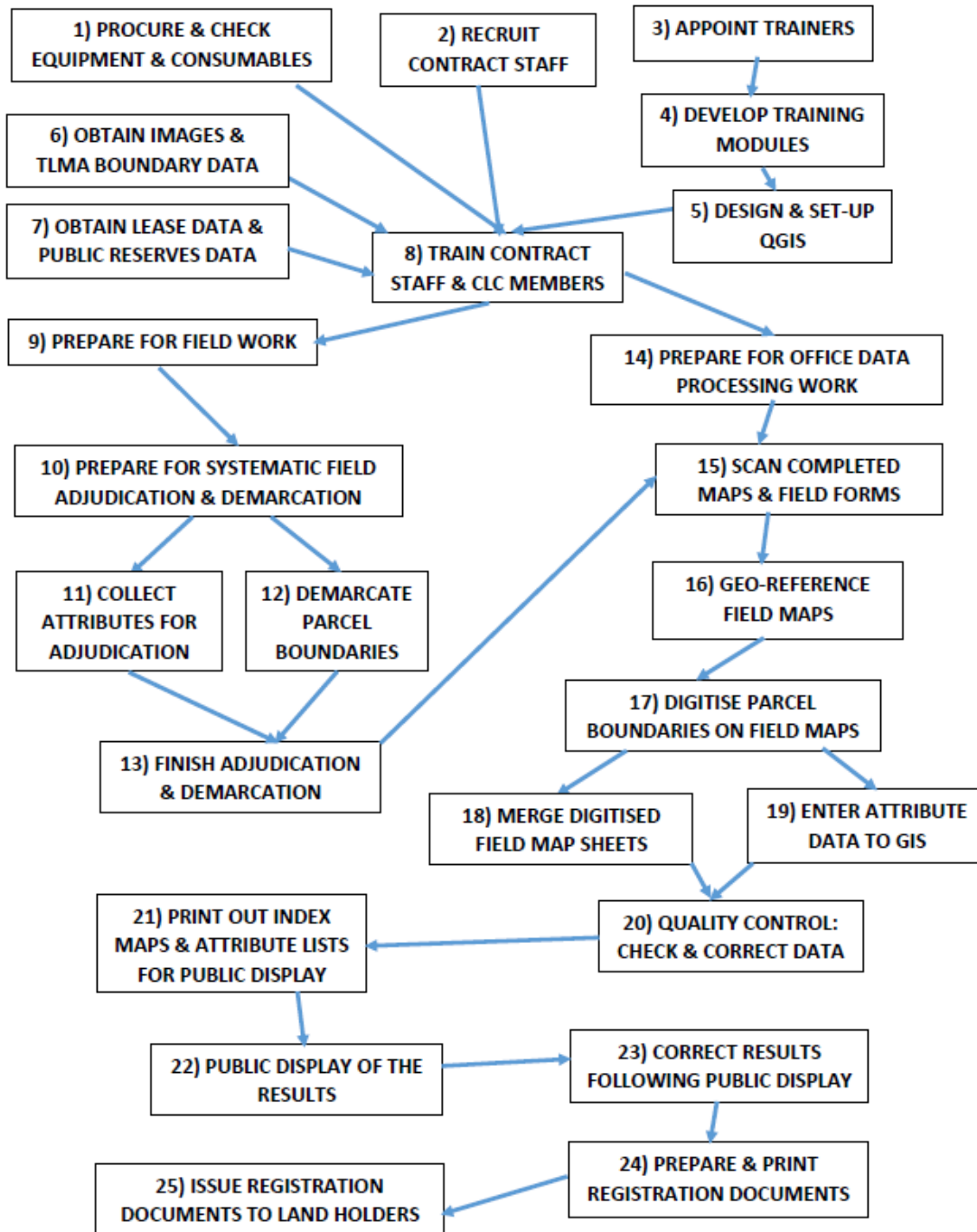


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Workflow Diagram





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7. Public Awareness, Customary Land Committees and Land Clerks

Public Awareness

Sensitisation and developing public awareness have been essential to getting support from land holders, village leaders, and traditional authorities. Support from the local Chiefs is especially important for success. It has also been important to developing understanding of the new law at District local government level. Regular meetings and discussion have been organised for leaders and the general public (some with hundreds of land holders together), well in advance of commencing field work to adjudicate and demarcate the land.

Customary Land Committees

Customary Land Committees have been elected in each pilot Group Village Area. As envisaged by the 2002 National Land Policy, and according to the law (CLA section 5) at least three of the seven CLC members must be (and in practice are) women. These elections have been successful in all three pilots and have given local ownership to the land reform process. All of the CLC members have taken part in the land adjudication and demarcation process and have been key in ensuring participation by the land holders.

Land Clerks

Also as envisaged by the 2002 National Land Policy, and according to law (CLA section 8) a Land Clerk has been appointed for each Traditional Land Management Area. Due to budgetary constraints, these could not be appointed by the District Councils, so staff with suitable skills were transferred from Regional Lands offices. However, this resulted in a reduced income due to the change in job (fewer night away from the office) and this has resulted in a lack of motivation for some clerks. The multi-faceted role of the Land Clerk has not been fully tested, as a single pilot in a single GVA is not a heavy workload. Most opinions are that several land clerks will be required in many of the TLMAs in Malawi.

The skills and responsibilities required of a Land Clerk, as defined in the CLA (section 8) include:

- There shall be appointed a Land Clerk for each Traditional Land Management Area to serve as a secretary to any land committee appointed for the purposes of this Act
- The Land Clerk shall
 - Possess a minimum of a Malawi School Certificate or equivalent
 - Be trained in land tenure management issues
 - Be competent in basic map preparation and land use planning



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- A Land Clerk shall have the duty to
 - Carry out such survey work as shall be required in the execution of the allocation process in accordance with the Land Survey Act 2016
 - Prepare a basic map for each TLMA in accordance with the Land Survey Act 2016
 - Maintain a register of land transactions occurring within a TLMA in accordance with the Land Survey Act 2016
 - Prepare land use plans in accordance with the Physical Planning Act 2016
 - Provide technical advice on land matters to members of the Land Committee
 - Monitor compliance with this Act and the Registered Land Act
- A Land Clerk shall have jurisdiction to determine all claims made under a process of District adjudication (CLA section 41)

The very wide range of skills required of a Land Clerk would be hard to find in any single person currently employed at less than senior levels within the Ministry of Lands and the question must be asked if anyone can be recruited who will possess all of the required skills as quoted above.

8. Technical Approach

Cost

The challenge is to design and implement a technical methodology which is low cost, and can be rolled out countrywide. By low cost is meant an average cost of less than ten US dollars per parcel. It has been achieved in the past ten years in the large-scale roll out of a similar methodology in countries such as Rwanda and Ethiopia. This low cost will not be achieved in pilots (e.g. due to a lack of economies of scale). For example, the amount of equipment (including vehicles) procured in the pilots has been small, so the price paid has been relatively high. A single field office has been set up for each pilot, whereas when roll-out occurs, a field office should be able to process outputs from a number of Group Village Areas. Pilots are also inevitably a learning process, so when things are being done for the first time, they will never be as efficient as after lessons have been learnt

Imagery for Mapping

The basis of the adjudication and demarcation process is the use of high resolution (30-50 cms GSD⁴) satellite images as the surveying and mapping base. Such images are now widely available and one of the

⁴ A smaller GSD means higher resolution and therefore more detail can be seen on the image



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advantages (as well as low cost) is that land holders with little or no formal education can easily interpret the images (which would not be the case if line maps were used).

The Malawi National Statistics Office holds nationwide coverage of HRSIs, which are only a few years old. The boundaries of TLMAs and demarcated land parcels are general boundaries, based mainly on what is visible on the satellite imagery. This significantly reduces the cost of surveying the boundaries.



Boundary demarcation on a satellite image

Staff Recruitment

Nine short-term contract staff have been recruited and trained for each pilot, to do the adjudication & demarcation in the field and the office data processing. There are three roles in this work:

- i. Field surveyor
- ii. Field data collector
- iii. Office data processor

The field surveyor and the office data processor usually have a relevant diploma or bachelor's degree qualification (e.g. in land administration or physical planning). This is a small but welcome boost to the



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large number of academically qualified people who do not have a job in the subject of their qualification. For any future roll out, there should be a large number of similarly qualified and employable people available. The data collector usually has a basic school leaving qualification and is local to the GVA, which is good for local buy-in.

Training

Training and supervision were done by staff of the Ministry of Lands from the Surveys, Lands and Physical Planning Departments. The training lasted for two weeks and used real examples in the GVA for the adjudication and demarcation. The MoLHUD surveyors have given good training and technical input to the adjudication and demarcation process, preparation of maps and documents for the public inspection and preparation of certificates and title plans. CLC members have not been involved in the training as much as they should have been; this should be corrected in future training exercises.

Adjudication & Demarcation

The adjudication and demarcation is the core of the work process. Three field teams have worked in each GVA, each team consisting of:

- A field surveyor
- A data collector
- Two CLC members

Each team has part of the GVA allocated to it. They work systematically from parcel to adjacent parcel, meeting the land holders, providing additional explanation of the process if required. The CLC members are responsible for arranging attendance of the land holders at their land parcels at the right time. The data collector allocates a five-digit UPIN (Unique Parcel Identification Number) to each parcel and collects parcel attributes, such as land holder names, encumbrances, disputes, and land use (see sample field form at Annex C). The surveyor writes the UPIN on the map inside the parcel and marks the parcel boundary on the field map (satellite image) during a perambulation of the boundary at which the neighbours are also present. The scale of the field map varies according to the size of the smallest parcel but is typically 1:2,000. The UPIN is unique to the GVA; codes for District and TLMA ensure a unique number in the context of the whole country.



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Field work, Chimalabanthu village, Rumphi District

Office Data Processing

Data collected in the field is processed into digital form in a temporary field office by:

- i. scanning the field maps
- ii. geo-referencing the field maps
- iii. digitising the parcel boundaries from the scanned field maps
- iv. entering attribute data to the GIS

The GIS is used to print out maps and documents for the public display and land registration.



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9. Disputes & Public Inspection

Where possible, disputes are settled informally by the Customary Land Committee during adjudication and demarcation. Also, land tribunals have been established for settling disputes in their respective areas. Customary Land Tribunals in each Traditional Land Management Area; District Land Tribunals in each District.

By law, a Public Inspection (also sometimes known as a Public Display) of the provisional results is held for 60 days. At the PI, a map of the whole demarcated area and lists of each parcel and their attributes, are displayed in a prominent outside location in the GVA (e.g. on a school building wall). The public access should be 24/7; MoLHUD staff and contract staff are available in working hours to enable any citizen to inspect the results, and to confirm agreement or make objections. If there are objections, then the reason for the objection and any evidence are recorded. Some objections are simple to resolve, e.g. spelling of names. One (relatively minor) problem is where CLC members try to use their position for personal gain; it has not been a major problem but is something to be aware of.



Public Inspection, Maoni village, Phalombe District



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10. Certificates, Title Plans & Land Registration

Finally, Certificates and Title Plans are produced for those parcels which (after the PI) can be declared Customary Estates (see examples at Annexes A and B). Good QC procedures are very important throughout the process, but especially when these legal documents are produced. These documents are issued to land holders and should be registered in a District Land Registry. However, these DLRs do not yet exist. The country currently has three Land Registries at

- Mzuzu Northern Region
- Lilongwe Central Region
- Blantyre Southern Region

Major resources will be needed to create the DLRs, for offices and equipment; the DLRs will also require large numbers of skilled staff.

Challenges

It can be seen from the above description of the CLA pilot implementation that there are many challenges for it to be successful. These will now be examined in more detail.

11. Cultural Challenges

Gender Equality

There are different approaches to land ownership between parts of Malawi. Generally, in the south there is a matrilineal system and, in the north, a patrilineal system. In the former land is passed through the female line, in the latter through the male line. The CLA does not give either gender stronger land rights than the other, which has been a problem in some areas. In Mzimba District (as mentioned above) a planned pilot had to be postponed because of very strong resistance to giving land rights to women. Navigating the tension between gender equality and cultural norms can be difficult.

Chief Allegiance

The relationship between farming families and the local chief is a strong one. So public awareness activities are always done through and with the blessing of local chiefs at village and Traditional Authority levels. In the Kasungu District pilot, about one third of farmers in the GVA owe allegiance to Chiefs outside of



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the GVA where they live and farm, which has resulted in many refusals to take part in the (voluntary) Customary Estate application process. A more thorough and flexible approach to public awareness raising is required in such situations.

Customary Land Committees

The CLA requires each group of villages (a GVA typically contains about ten villages) to elect a Customary Land Committee. The chair of the CLC is the (unelected) head of the group village; the other six CLC members are elected by the adult population of the group village. At least three of the six elected members must be women. These CLCs have been essential in getting local cooperation and ownership of the Customary Estates creation process. Two CLC members work each day with each of the three technical field teams; they organise farmer attendance at the land parcels (for adjudication and demarcation) and work to resolve disputes. Without the CLCs, progress would be impossible. This has been a successful part of the pilot process and bodes well for the future. However, there will be an ongoing need for training (for any law changes and when new CLC members are elected at the three yearly elections). Existing CLC members have requested bicycles for transportation around the GVA. A small office is required for the safe a storage of documents.

Public Inspection

The CLA requires a public inspection of the provisional adjudication and demarcation results lasting sixty days. A large-scale index map is printed (showing parcel boundaries and UPINs) and a list the of claimants and attributes of each parcel. The map and list are put in a prominent location which can be accessed at any time by the local people (e.g. a school building wall). Anyone can come and inspect the results; they can then either confirm agreement or object; if they object details will be recorded and evidence requested. Small corrections such as spelling of names are corrected on the spot.

The Public Inspections in the three pilots appear to have worked quite well, although there is a need to ensure a consistent approach; e.g. in one PI the maps were printed without the imagery background, which hampers easy identification of each parcel and detection of boundary related errors.



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12. Technical Challenges

Survey Accuracies

Malawian surveyors are used to measuring property boundaries using a 'fixed boundary' method. This is of a high accuracy and is expensive, which is fine for high value properties, but unsuitable for low value small rural land parcels. A low-cost survey methodology is being tested, using 'general boundaries' and high-resolution satellite images⁵, which requires a change of thinking by Malawian surveyors. This is not always an easy concept to get across. Another related issue is the use of field surveyors who are not 'licensed'; but the number of licensed surveyors in Malawi is very low and will never be able to meet the demand for mass land registration in rural areas. These 'para-surveyors' will be essential in large numbers if funding is obtained for a national roll out of the CLA.

Staff Numbers

The technical work of adjudication and demarcation is done by staff recruited on short-term contracts (a maximum of one year). In Malawi, there are large numbers of people with a technical qualification (degree or diploma) who are unemployed. Such people (with typically surveying, land administration or physical planning qualifications) have formed the basis of the technical teams, particularly the para-surveyors doing parcel boundary demarcation and the data processors who work in a temporary local office. The pilots are providing good opportunities for these people to put their technical knowledge into practice. Also, the work of collecting attribute data has often been given to local people with a basic school leaving certificate; again, an opportunity for employment in areas short of paid jobs. Any roll out of the work will require large numbers of staff, who will need to be recruited on short-term contracts (albeit possibly for several years); this will require a major recruitment exercise.

Training & Supervision

So far, the pilots' contract staff have been trained and supervised by technical staff (civil servants) from the Ministry of Lands. These are qualified people with good practical experience. However, there are insufficient numbers in the Ministry of Lands to enable training and supervision of the hundreds of local teams which would be required for a national roll-out of the methodology. A small start has been made in the pilot at Phalombe to use one of the better contract staff in a supervisory role. This approach will need to be replicated many times if donors agree to fund a large-scale roll out.

⁵ Both general boundaries and satellite images are allowed in the new Land Survey Act passed in 2016



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Land Registration

When the public inspection has been completed, those (hopefully most) land holders with confirmed rights will be issued with a Certificate – Title Plan which can then be used to register the rights at a District Land Registry. However, at present only three Land Registry offices exist in Malawi, in the three largest cities of Lilongwe, Blantyre and Mzuzu. The new Registered Land Act requires the creation of District Land Registries, but there is no funding to create these at present.

Consistent Technical Procedures

During progress visits to the three ongoing pilots, it has been clear that there are variations in procedures between the three locations. For example, how to deal with disputes, what information to display at the public inspection. While some local variation is perhaps inevitable (or even desirable), there should be more effort to ensure consistency, by better communication and a clear written definition of procedures.

13. Other Challenges

Informal Sales

In Phalombe, which is the most advanced of the three pilots, there are already some alleged instances of land being sold. This is against the law, as Customary Estates cannot be created until the public inspection is completed. Even then, the law restricts sales for the first five years to between immediate family members. The Ministry of Lands, particularly the Department of Lands with it, will need to create procedures for ensuring that the law is adhered to and to clamp down on informal transactions. This will partly be achievable by better training and public awareness at grass roots level.

Donor Interest

Completion of the nine ongoing or planned pilots will only complete the adjudication and demarcation of at most 20,000 rural land parcels. This is a very small proportion (less than 0.2%) of the estimated 10,000,000 plus rural land parcels in Malawi. So, the search is on for donors to be ready to fund a full or partial national roll out. The Government of Belgium has committed to fund the roll out in Kasungu District; so, there are only another 27 Districts to go!



14. Conclusions

The challenges are very big; but the opportunities for transforming rural land rights with increased security of tenure are also large. It will require a determined and co-ordinated approach from the Malawi Government, supported by the donor community over a long period of time, to achieve the objectives.

Overall, the three pilots are a good start to designing an efficient and cost-effective Customary Estate creation process. It is a pity that the volumes of work done are so small, and the real challenge comes when the procedures are tested in a large-scale roll-out.

District	GVA	Parcels adjudicated & demarcated	% parcels in GVA adjudicated & demarcated	Total parcels in GVA (estimate)
Phalombe	Maoni	2187	84%	2600
Kasungu	Ching'amba	1115	66%	1700
Rumphi	Chimalabanthu	900	75%	1200

The key issues which need to be addressed in order to obtain donor support and thus achieve widespread implementation of the Customary Land Act are:

- i. Successful pilot implementation that can be shown to be scaleable
- ii. Increasing efficiency of the technical methodology, by attention to improving the many detailed parts of the workflow (see many of the points in 'Lessons Learnt' in the following section 15)
- iii. Developing supervisory skills in the short-term contract staff, so that implementation is not dependent on large numbers of civil servants (donors will not support mass recruitment of civil servants)
- iv. Focussing initially on those TLMAs where the Traditional Authorities give strong support
- v. Being sensitive to local customs while still supporting gender equality



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15. Lessons Learnt from Pilots in Phalombe, Kasungu and Rumphi

Throughout the pilot implementation so far, ‘Lessons Learnt’ have been compiled so that future work can be improved, based on the lessons learnt from the early work. These lessons are described in the following pages.

Legal & Contractual

1. **DONOR CONTRACTS.** If donors contract companies to do a certain amount of work for implementing the Customary Land Act, the contracts should be defined in terms of complete administrative units (e.g. whole GVAs, TAs or Districts), not in terms of numbers of parcels or households. The latter approach (which existed in the three pilots) sometimes leads to partially completed administrative units, which means land holders whose land is un-adjudicated are unhappy.
2. **APPLICATION FORM DESIGN.** The Customary Estate ‘application form’ which is in the CLA regulations (first schedule, form A) needs amending in the following ways:
 - More specific details are required about the place in which the land is situated (i.e. District, TLMA, GVA)
 - The question about joint applicants needs to be revised, as joint applicants may be other than husband and wife (e.g. brothers, sisters)
 - The form seems to assume that the applicant is one person, even if it is a joint application. The names of all joint applicants should be on the form (not just e.g. the husband)
 - It must be made clear that children should not be applicants, only adults
 - The question about parcel size is not required as land holders will not know the size of their parcels until the parcel boundary data has been digitised
3. **ADDITIONAL INFORMATION.** Additional information is required, other than what is requested on the CLA application form. This information should be incorporated into a revised application form (n.b. in the three pilots, the land holders’ application was made at the first parcel visited of each holding, when the land holders gave the information required on the application form to the data collector):
 - Field sheet map number
 - Field team number
 - The number of parcels in the holding
 - The type of land use, e.g. residential, arable



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- Ownership type, e.g. individual, communal
- Evidence of rights, e.g. Customary Land Committee confirmation
- Whether there is a dispute about boundaries or ownership, and if so what type of dispute
- Whether there are any encumbrances, e.g. footpaths or utilities
- Names of guardians who are applying on behalf of orphaned children

Planning, Public Awareness & Sensitisation

4. SENSITISATION & PUBLIC AWARENESS. Sensitisation must be thorough and must take account of the cultural differences between areas. Complex situations where people living or farming in a GVA or TA acknowledge the Chief in another GVA or TA may cause farmers to refuse to take part in the process. Questions about the local situation need to be asked before and during the initial sensitisation, and meetings arranged to deal with the complexities, so that any problems of non-cooperation do not occur during the adjudication and demarcation.

Planning & Monitoring

5. PLANNING. Planning (i.e. the work plan) must be realistic and take account of factors such as: time of year (e.g. rainy season slows work down, fully grown maize slows work down) and elections. Plans should be reviewed, and if necessary revised, at least every month. Planning should be based on previous experience and local factors, not just guessed.
6. TEAM PROGRESS MONITORING. Progress monitoring is important to inform the planning review process. Parcels completed (adjudicated & demarcated) each day by each team should be recorded, and weekly assessments of progress made. Each field team should be monitored separately (in terms of parcels completed each week) so that variations in speed can be investigated. It does not necessarily follow that a slower speed means the team is working poorly, or that a faster speed means a team is working better. It could be the case that a higher speed is done to the detriment of quality. N.B. the monitoring form (a spreadsheet) must be completed each day for the monitoring to be effective; there is no point in only updating it each month (as was happening in Kasungu).
7. GVA COMPLETION MONITORING. The % completion of the GVA adjudication and demarcation should be calculated each week, so that will inform estimating of how long it should take to finish the field work.



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8. **PROGRESS DISPLAY.** Charts and maps should be displayed in the field office wall so that everyone can see progress: this is good for team morale.

Field Work

9. **GVA BOUNDARIES.** There is no cartographic or digital record of Group Village Area boundaries, but the boundaries are known 'on the ground'. The best way of surveying the GVA boundaries in preparation for the fieldwork is to measure them using hand-held GPS after the CLC elections have taken place, using CLC members, Surveys Department and contract staff.
10. **NUMBER OF FIELD TEAMS PER GVA.** Each pilot has been done with three field teams. If the time from beginning to the end of implementation is to be shorter, then the number of field teams working together in a GVA should be increased to four or five. This will of course require more office and field equipment.
11. **SYSTEMATIC FIELD WORK.** Field teams must resist the temptation to visit all of a land holder's parcels before the next land holder's parcels (unless the holder's parcels are contiguous), as it is more efficient (less travelling time) to go from one parcel to a neighbouring parcel.
12. **ATTENDANCE AT PARCELS.** In view of the above point, it is very important that the Customary Land Committee (CLC) arranges for land owners and neighbours to be present at their parcels when the field team arrives to adjudicate and demarcate.
13. **FIELD MAP SCALE.** The scale of the field maps should vary according to the size of the parcels (i.e. larger parcels should have a smaller scale), but the map size of the smallest parcels must be large enough to see the parcels and their boundaries. In some cases, there could be more than one map scale over the GVA area.
14. **FIELD TEAM LEADER.** It must be made clear who is the leader of each field team. It will usually be the surveyor, but it could be the data collector. The Team Leader has the role of ensuring the adjudication and demarcation is done according to the law and the required technical standards.
15. **PARCEL UPIN ALLOCATION.** It must be clear who in the field team is responsible for allocating a UPIN to each parcel. This should usually be the data collector, who is less likely to allocate duplicate UPINs than the surveyor.



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16. **TEAM UPIN ALLOCATION.** Each team needs to be allocated a block of UPINs so that there will be no duplication of UPINs between teams within a GVA. The easiest way to do this is to say that the first digit of the five-digit UPIN is the number of the field team, so for a three-team approach:

- team 1 UPINs are 10000 - 19999
- team 2 UPINs are 20000 - 29999
- team 3 UPINs are 30000 - 39999

This means that each team has potentially 20,000 UPINs to allocate in a specific GVA, which should be more than enough for any GVA in Malawi.

17. **COMPLETION OF FIELD FORMS.** If any of the answers to questions on the field form are ‘not applicable’ or ‘no’ (e.g. for whether there is a dispute or an encumbrance), then the ‘no’ answer must be selected, not just ignored. This makes it clear that the answer is ‘no’, rather than it has been forgotten.

18. **AD HOC NON-PARTICIPATION.** The Customary Estate application and creation process is voluntary. There will always be occasional land holders who choose not to apply for a CE. This causes a problem for the adjacent land holders who do want to apply for a CE. In these circumstances, the field team should adjudicate and demarcate the adjacent parcels without the neighbour who does not participate, and a dispute should be recorded of the type “non participation”. A parcel record should be created of the non-participatory land holder (and parcel), whose name will be known to the CLC members of the field team.

19. **CHILDREN’S RIGHTS.** There have been requests by claimants to have children (under 18) be recorded as claimants/owners of certain of the parents’ parcels. Under 18s cannot hold customary estates, although if both parents are dead, guardians can hold the rights in trust until the children reach age 18. This needs to be made clear to the CLC members, and under 18s should not be recorded as claimants.

20. **FORM A.** Form A is the legal claimant form in the CLA regulations. In some ways it is not fit for purpose. E.g. the form assumes in question 1 that there is a single claimant. But in question 4 it asks, “If married, are you applying jointly with a spouse or as a family?” Where there is more than one claimant, all claimants should be signatories to the form A. Form A needs to be revised, which requires formal amendment of the CLA Regulations.



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21. **FIELD FORM.** The field form used by the field data collectors was introduced because Form A does not contain enough questions to obtain the necessary information. In future, the CLA Regulations should be amended to include a revised form including the data items on the field form.

Office Work

22. **FIELD OFFICE LOCATION.** The field office should be as close as possible to the GVA. This reduces travelling time each day.
23. **RECORDING THE HANDOVER OF FIELD MAPS & FIELD FORMS.** The handover of field maps and field forms should be recorded on a form each day and signed as handed over by the respective data collector (field forms) or surveyor (field maps) and signed received by the team's data processor. This was not done consistently in all three pilots.
24. **DATA BACK-UP.** There must be at least weekly data back-ups, and on at least two external hard drives, and the hard drives must not be kept in the same location (in case of theft or fire) and not kept overnight in the field office.
25. **STORAGE OF FIELD MAPS & FIELD FORMS.** Completed and not-yet-used field maps and field forms should be stored separately from each other, and separately for each team. A four-drawer filing cabinet for each team is a good idea (as used in Phalombe). Completed field forms should also be kept in a ring binder, arranged in UPIN order.
26. **PARCEL DIGITISING & ATTRIBUTE DATA ENTRY.** Digitising of all parcel boundaries on a single map sheet should be completed before attribute data entry for those parcels is done. The attribute data entry should then be done for all parcels on that map sheet. This is much more efficient than entering each parcel's attributes after each parcel is digitised.
27. **ATTRIBUTE DATA ENTRY.** If any of the answers to questions are 'no' or 'not applicable', then that must be stated in the attribute data entry field, not just left blank. This shows that the answer is 'no', whereas a blank field could mean that the answer has been forgotten or mistakenly not entered.
28. **ANTI-VIRUS SOFTWARE.** Anti-virus software must be installed on each PC and kept up to date. Operators must not be allowed to insert flash drives into PCs.



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Public Inspection

29. INDEX MAP SCALE. The scale of the index map for the Public Display may be smaller than the field map scale, but the smallest parcels (with their UPINs displayed on the map) must be identifiable.

30. INDEX MAPS. Index maps must be printed with parcel boundaries, UPINs and field map numbers & layout overlaid onto the satellite images.

31. CLAIMANT LISTS. The list of owners at the Public Display only needs to have a selection of the parcel attributes displayed, i.e.

- name & ID of claimant 1
- name & ID of claimant 2
- total number of claimants (in case it is more than 2)
- UPIN
- parcel area in hectares (to only one decimal place of a hectare)
- number of parcels in the holding
- land use type
- field map number (to help location on the index map)

The lists should be in claimant name order, so it is easier for a claimant to find his/her parcels and the parcels of a single holding are grouped together.

32. SIGNATURES AT PUBLIC INSPECTION. When claimants attend the public inspection, they must sign or fingerprint agreement or objection to the parcel records.

33. ATTENDANCE AT PUBLIC INSPECTION. All claimants to jointly claimed parcels must attend and sign their agreement or objection to each claimed parcel.

Equipment & Materials

34. FIELD OFFICE COMPUTERS. Desk-top computers should be bought for the field office (they are more secure than lap-tops), though lap-tops are useful for the Public Display. At least 8GB RAM is required. Larger than standard monitors should be bought for the digitising and data entry.

35. CONSUMABLES. Sufficient quantities of consumables (e.g. toner, paper) should be bought in advance so work is not slowed down waiting for delivery.



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36. SPARE FIELD EQUIPMENT. There should be spare items in each field office (e.g. scale rulers, tape measures, straps for map boards) as these things are easily lost or damaged.
37. FIELD CLOTHING. The field clothing, including shoes, should be hard wearing. Shoes procured for the field staff in the pilots were of poor quality and the field teams stopped using them.
38. FIELD BAGS. There should be bags with shoulder straps for each field team in which to carry field maps, field forms, equipment.
39. EQUIPMENT & MATERIALS CHECK LIST. There are many different items required, and it is easy to overlook some of them during the procurement and delivery process. An equipment check list is useful for ensuring all items have been procured and delivered to the field office.

Staffing & Training

40. LAND CLERKS. According to the CLA, each TLMA should have a Land Clerk, who should be appointed by the District Office. However, for the purposes of the three pilots, the LC was appointed from existing Region staff of MoLHUD (in order to speed up the start of the pilot field work). This has caused some unhappiness for the LCs, as they have suffered a reduction in income; in one pilot the LC went absent part way through the fieldwork; this slowed down the notification of the Public Display. The LC is a key person in the CE process according to law; so a solution must be created to ensure no reduction in income and hence good morale. Recruiting the Land Clerks rather than transferring them from an existing job is probably the best way of doing this.
41. STAFF RECRUITMENT. While staff with the right skills (surveying and GIS-data processing) are very useful, local staff also contribute through their local knowledge and it gives local people a better sense of ownership of the process. So, a combination of skilled and local staff is best.
42. TRAINING & SUPERVISION. The trainer-supervisors on the pilots have been from the MoLHUD Surveys Department, which has enabled the SD to build up expertise in what for them is a new surveying methodology. However, this approach is not sustainable for a roll-out, as the SD does not have enough skilled staff. So, the best contract staff should be identified to become trainer-supervisors.



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43. **TRAINER & SUPERVISOR NUMBERS.** During the training and the first few weeks of implementation, there should be at least one office/GIS supervisor and three field/Surveyor supervisors (ensuring one supervisor per team in the field). After this period, there should be a minimum of one office/GIS supervisor and one field/surveyor supervisor. It is very helpful if the surveyors also have some GIS skills, as they can then help with the office/GIS training.
44. **SUPERVISORY STAFF CONTINUITY.** Supervisory staff should remain working in a particular GVA from start to finish of the work. This enables them to build up good knowledge of the local situation, and a good working relationship with the CLC.

Post-Public Inspection

45. **CERTIFICATE & TITLE PLAN.** In the CLA Regulations, form D is the Certificate of Customary Estate. There is no specification for a Title Plan (map). A Title Plan has been designed, but this should be in the Regulations. Also, it is a good idea if there is a combined Certificate and Title Plan, to reduce the number of pieces of paper being issued.
46. **LAND REGISTRATION.** Registration of the CE Land Records should take place immediately after the Public Inspection. However, there appears to be no initiatives to plan how to Register in the absence of District land registries.
47. **RECORDS' STORAGE.** According to the law, records should be kept by CLCs, TLMAs and District Land Registries. Office space is required in the respective locations, as well as staff, furniture and equipment.
48. **RECORDS UPDATING.** It is essential that the land records are updated as required after the public Inspection is completed. Procedures need to be worked out to do this.
49. **TRANSACTIONS.** In Phalombe, there are informal reports of the selling of land parcels during the Public Inspection. This is against the law, as Customary Estates have not yet been created. Even after the creation of CEs, sales are restricted for five years to immediate family.



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Annex A – Customary Estate Certificate

FORM D

CERTIFICATE OF A CUSTOMARY ESTATE (ss. 23 (5) and 27, reg. 33)

Adjudication Section..... Title No.:.....

This is to CERTIFY that: AJINNY SUKALI is/are now granted a customary estate over the land at Unique Parcel Number: **10299**

The following conditions apply to this customary estate:

.....
.....
.....
.....

AJINNY SUKALI

Signature of Grantee

STAINER MOLLEN

ANNIE CHIMALIZENI

Chairperson

Land Clerk

Customary Land Committee

Given under my hand and the seal of the..... District
Registry this..... day of, 20.....

.....
District Land Registrar

This grant is made subject to the conditions that

- The occupier shall use, keep and maintain the land in good state, and, in the case of land to be used for farming, farm the land in accordance with the practice of good land husbandry ordinarily used in the area;
- No building shall be erected until all required permissions have been obtained;
- The occupier shall pay any applicable rent, fees, charges, taxes, and other requirements, if applicable, in respect of the occupation of the land;
- The occupier shall comply with all rules, including by-laws applicable to the land and all lawful orders and directions given by a land committee relating to the use and occupation of the land;
- The occupier will retain and keep safe all boundary marks, whether natural or otherwise; and
- The commissioner and a land committee representative may enter and inspect whether the conditions under which a customary estate is granted are being complied with.




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Annex B – Customary Estate Title Plan


TITLE PLAN

No.....

Name(s) : Aida Mkolimbo and Wayisoni Mkolimbo


Region Southern..... District Phalombe..... TLMA Nazombe..... GVA..... Maoni

Parcel No. 10664..... Approximate Area 0.486 Ha.....

Centroid: Easting 802 605 mE..... Northing 8 266 164 mN.....

802600

N
↑



SCALE 1 : 400

Checked By

Name : Kondwani Antonio Zgambo

Signature :

CARTOGRAPHER

Legend

- Roads
- Rivers
- Parcel
- Contiguous Parcels

Certified By

Name : Innocent Makoza

Signature :

REGISTERED LAND SURVEYOR



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Annex C – Supplementary Field Attribute Form

MALAWI CUSTOMARY LAND ACT PILOTS - SOUTH REGION - PARCEL FIELD FORM					
DISTRICT		TLMA		GVH	
FIELD SHEET NUMBER		FIELD TEAM NUMBER		DATE (dd / mm / yyyy)	
UPIN		EVIDENCE OF RIGHTS	YES / NO	EVIDENCE TYPE	
LAND USE TYPE		OWNERSHIP TYPE (e.g. individual, communal)			
NUMBER OF PARCELS IN HOLDING		ADDITIONAL INFORMATION			
ENCUMBRANCES	YES / NO	ENCUMBRANCE TYPE			
DISPUTE	YES / NO	DISPUTE TYPE			
DETAILS OF PEOPLE WITH AN INTEREST IN THE PARCEL					
We hereby acknowledge that the information we provided about this land parcel is true					
	NAME	GENDER	SIGNATURE	STATUS	
HOLDER 1					
HOLDER 2					
HOLDER 3					
HOLDER 4					
HOLDER 5					
HOLDER 6					
HOLDER 7					
HOLDER 8					
HOLDER 9					
HOLDER 10					
GUARDIAN NAME					
GUARDIAN ADDRESS					
CLC MEMBER					
DATA COLLECTOR					