



# MALAWI REPORT

## ASSESSMENT OF MALAWI LEGISLATION THROUGH THE URBAN LAW MODULE OF THE LAW AND CLIMATE CHANGE TOOLKIT

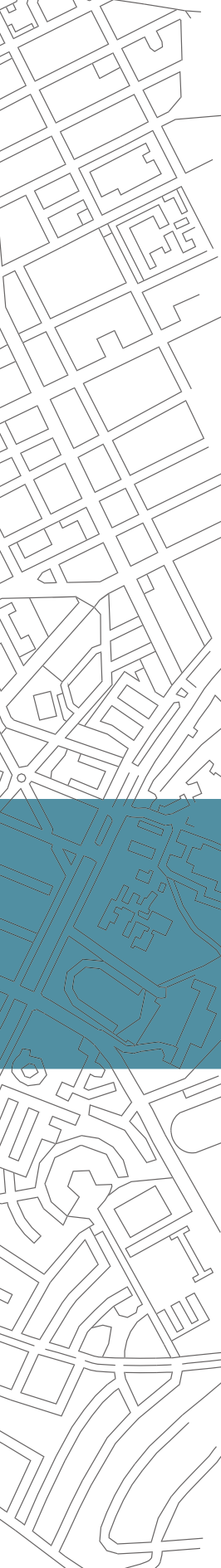
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PROJECT ON URBAN LAW FOR RESILIENT AND LOW CARBON URBAN  
DEVELOPMENT IN MALAWI, NAMIBIA, AND ZIMBABWE

**URBAN CLIMATE LAW SERIES | VOLUME 3**







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## **Assessment of Malawi Legislation through the Urban Law Module of the Law and Climate Change Toolkit**

### **Urban Planning Law for Climate Smart Cities: Urban Law Module of the Law and Climate Change Toolkit**

First published in Nairobi in 2022 by UN-Habitat

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United Nations Human Settlements Programme (UN-Habitat)

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[www.unhabitat.org](http://www.unhabitat.org)

**HS Number: HS/042/22E**

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A hydroelectric dam seen from the Kapichira Falls, Shire river, Malawi. by Joshua Wiese source: Flickr



***National Validation Workshop with Key Malawi Stakeholders on Law and Climate Change. Thursday, 2nd June 2022, Ufulu Gardens, Lilongwe, Malawi. Photos by Anne Amin (UN-Habitat)***



# TABLE OF CONTENTS

INTRODUCTION.....	x
<b>CHAPTER I : GOVERNANCE FRAMEWORK FOR URBAN AND CLIMATE PLANNING .....</b>	<b>1</b>
EXECUTIVE SUMMARY.....	1
1.1 MULTILEVEL INSTITUTIONAL COORDINATION .....	3
1.2 PARTICIPATORY GOVERNANCE.....	7
1.3 DATA COLLECTION AND SHARING .....	12
1.4 LOCAL GOVERNMENTS' MANDATE FOR URBAN PLANNING IN URBAN AREAS.....	15
RECOMMENDATIONS.....	19
<b>CHAPTER II : URBAN AND TERRITORIAL PLANNING.....</b>	<b>22</b>
EXECUTIVE SUMMARY.....	22
2.1 NATIONAL TERRITORIAL PLANNING .....	24
2.2 REGIONAL TERRITORIAL PLANNING .....	28
2.3 SPATIAL PLANS FOR URBAN AREAS .....	30
RECOMMENDATIONS.....	33
<b>CHAPTER III : PLANNING FOR ADAPTATION .....</b>	<b>38</b>
EXECUTIVE SUMMARY.....	38
3.1 CLIMATE RISKS AND VULNERABILITY FOR PLANNED AREAS AND INFRASTRUCTURE .....	43
3.2 IDENTIFICATION AND PRIORITIZATION OF ADAPTATION OPTIONS .....	48
3.3 IMPLEMENTATION OF IDENTIFIED ADAPTATION OPTIONS.....	51
3.4 ADAPTATION OF SLUMS AND OTHER VULNERABLE SETTLEMENTS .....	56
3.5 PLANNED RELOCATIONS FROM AREAS AT RISK OF CLIMATE CHANGE .....	60

# TABLE OF CONTENTS

3.6 SECURITY OF TENURE.....	60
3.7 DEVELOPMENT APPROVAL AND ADAPTATION .....	64
RECOMMENDATIONS.....	67
<b>CHAPTER IV : PLANNING FOR MITIGATION.....</b>	<b>72</b>
EXECUTIVE SUMMARY .....	72
4.1 URBAN PLANS AND GREENHOUSE GAS EMISSIONS.....	74
4.2 URBAN FORM AND REDUCTION OF GREENHOUSE GAS EMISSIONS FROM TRANSPORT AND INFRASTRUCTURE.....	76
4.3 GREEN SPACES FOR ENVIRONMENTAL AND CLIMATE SERVICES.....	78
4.4 NEIGHBOURHOOD DESIGN AND ENERGY SAVING IN BUILDINGS.....	79
4.5 DEVELOPMENT APPROVAL AND MITIGATION .....	79
RECOMMENDATIONS.....	80
<b>CHAPTER V : ECONOMIC AND NON-ECONOMIC INSTRUMENTS FOR CLIMATE-FRIENDLY URBAN PLANNING.....</b>	<b>85</b>
EXECUTIVE SUMMARY .....	88
5.1 RESOURCES FOR URBAN PLANNING AND CLIMATE CHANGE.....	87
5.2 INCENTIVES FOR MITIGATION AND ADAPTATION IN URBAN PLANNING .....	92
5.3 INCENTIVES THAT PROMOTE UNSUSTAINABLE URBAN LAND USES.....	93
RECOMMENDATIONS.....	94

# LIST OF FIGURES

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<b>Figure 1:</b> Rating matrix for Malawi on governance framework for urban and climate planning .....	1
<b>Figure 2:</b> Institutional coordination framework for climate change .....	5
<b>Figure 3:</b> The organogram for local councils in Malawi .....	8
<b>Figure 4:</b> Rating matrix for Malawi on urban and territorial planning.....	22
<b>Figure 5:</b> Rating matrix for Malawi on planning for adaptation .....	38
<b>Figure 6:</b> Rating matrix for Malawi on planning for mitigation .....	72
<b>Figure 7:</b> Monthly climatology of mean-temperature and precipitation in Malawi from 1991-2020.....	77
<b>Figure 8:</b> Rating matrix for Malawi on economic and non-economic instruments for climate friendly urban planning.....	85

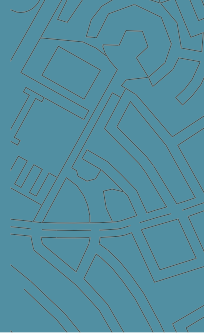


# LIST OF TABLES

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<b>Table 1:</b> Referenced legislation (Governance framework for urban and climate planning) .....	20
<b>Table 2:</b> Referenced legislation (Urban and territorial planning) .....	36
<b>Table 3:</b> Implementation, Monitoring and Evaluation Strategy – reduced vulnerability to climate change impacts through improved social and ecological resilience .....	45
<b>Table 4:</b> Referenced legislation (Planning for adaptation).....	70
<b>Table 5:</b> Referenced legislation and policies (Planning for mitigation).....	83
<b>Table 6:</b> Referenced legislation and policies (Economic and non-economic incentives for climate - friendly Urban planning).....	96

# INTRODUCTION



UN-Habitat, through the Policy, Legislation and Governance Section, in collaboration with the Taubman College of Architecture and Urban and Regional Planning at the University of Michigan (United States of America) supported Malawi, Namibia and Zimbabwe (between December 2021 and November 2022) in conducting country assessments of existing urban laws on climate change for resilient and low carbon urban development. The project was funded by the Konrad-Adenauer-Stiftung Regional Programme Energy Security and Climate Change in Sub-Saharan Africa (KAS) with the aim of improving the capacities and knowledge of the national Governments to support climate-friendly urban development through legal frameworks.

This report is the legal assessment made for Malawi. The structure mirrors the categorization in the UN-Habitat Urban Law Module of the Law and Climate Change Toolkit which has five assessment areas, namely a) Governance framework for urban and climate planning; b) Urban and territorial planning; c) Urban planning and design for adaptation; d) Urban planning and design for mitigation; and e) Economic and non-economic instruments for climate friendly urban planning with an executive summary and recommendations for each section.

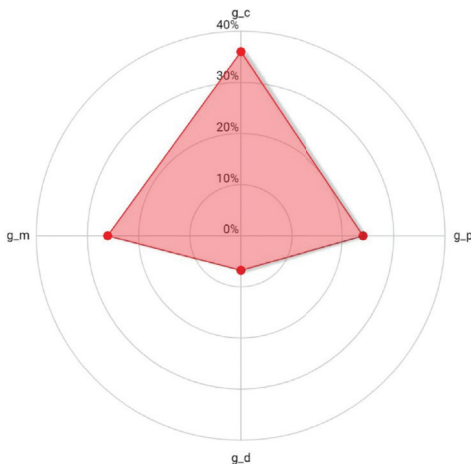


Locals in Malawi farming by Adrian K Mitchell source: flickr

# CHAPTER 1.

## GOVERNANCE FRAMEWORK FOR URBAN AND CLIMATE PLANNING

### EXECUTIVE SUMMARY



#### Governance & Institutional Arrangements

g_c	Multi-Level Institutional Coordination
g_p	Participatory Governance
g_d	Data Collection Sharing
g_i	Local Government Mandate

Figure 1: Rating matrix for Malawi on governance framework for urban and climate planning

The magnitude and urgency of climate change calls for an emphasis on strong and effective governance systems and practices. Multilevel governance characterized by intergovernmental (between different levels of government) and intragovernmental (within the same level of government) cooperation built around broad consultative processes and mechanisms for vertical and horizontal cooperation and integration are necessary to achieve climate-responsive governance. Effective climate governance will also require participation by stakeholders, data collection and sharing among public agencies as well as dissemination to the general public, and adequate powers allocated

to local authorities on steering and controlling climate-friendly urban planning and land use.<sup>1</sup>

In Malawi, the **Constitution** of 1994 promotes decentralized governance and attributes functions to local governments, including the promotion of infrastructural and economic development, which must be coordinated with higher tiers of government. The **Land Act** of 2016 harmonises the aspirations that were outlined in the 2002 **Malawi National Land Policy** and now governs the **legal framework and policies** concerning of land in Malawi. Public land is owned by the government and managed by local government authorities. Additionally, there are the only two constitutional provisions addressing vertical inter-institutional coordination.

With respect to urban planning, one of the aims outlined in the 2019 **National Urban Policy** is to establish a functional urban system in Malawi by creating a “spatially balanced and integrated hierarchy of urban centres and human settlements”. The **Physical Planning Act** of 2016 foresees horizontal coordination at the national level to produce the **National Physical Development Plan**, and vertical coordination at the subnational levels in the preparation of district and local physical development plans. The 2016 **National Climate Change Management Policy** reinforces the powers and responsibilities of sectoral ministries and highlights areas of high priority for the country where high-level

1 UN-Habitat (2022). Urban Planning Law for Climate Smart Cities: Urban Law Module of the Law and Climate Change Toolkit, p. 19.

*The legal and governance framework in Malawi should comprehensively identify stakeholders, consider specific community needs, require community feedback, and grant access to appeals mechanisms for spatial and climate-related decisions.*

coordination will be necessary. In terms of intra-metropolitan coordination, the **Physical Planning Act** calls for the establishment of joint committees when an area earmarked for physical development lies within the boundaries of two or more local government authorities. Moreover, the **Local Government Act** of 1998 assigns the responsibility to formulate, approve and execute district development plans to local councils, suggesting that coordination among the various councils comprising a district is implicitly required and expected to accomplish a larger district goal or project. Furthermore, the **Local Government Act** specifically enumerates a requirement for local assemblies to cooperate “in order to learn from their experiences and exchange ideas”.

Regarding participatory governance, the Constitution enshrines principles of democratic,

participatory involvement in policymaking and local government. The **Environment Management Act** of 2017 includes provisions which support public participation in urban planning to address climate change and links these provisions to the principles of upholding democratic participatory politics. In terms of spatial planning, the Physical Planning Act empowers the competent planning authority to conduct public consultations with identified stakeholders and community members when a plan is being prepared, and specifically requires consultations with those who would be affected by land acquisitions or land readjustment foreseen in any plan under development. The Act also fosters public access to information in the planning process by requiring that all plans (excepting the National Physical Development Plan) be subject to a public inspection period prior to their approval. Legal provisions linking participatory processes to specific community needs are primarily found in the country’s land management legislation and policy, such the **Land Act** and **National Land Policy**. Finally, access to dispute-resolution mechanisms is foreseen in several pieces of legislation, namely the Physical Planning Act and the **Environment Management Act**, while general principles of peaceful dispute resolution through alternative dispute-resolution mechanisms are upheld in the Constitution.

There are very few existing data and information collection mechanisms provided for by law in Malawi that improve the collection, organization and consistency of data relevant to urban and climate planning. **The Constitution, Local Government Act, Environment Management Act, National Urban Policy** and the 2013 Guidebook on the Local Government System in Malawi do not include any sections, provisions or guidelines outlining a structured, binding policy

of data collection and sharing amongst various levels of the country's system of governance. However, the National Land Policy and **National Climate Change Management Policy** of 2016 include some provisions that reference the implementation of or need for data collection and sharing mechanisms. While the end goal of such provisions is informational transparency and ease of access to information for the people of Malawi, the national policy commitment has not directly translated into a legal provision requiring data collected to be shared across vertical, horizontal and local structures within the Government.

Finally, several pieces of legislation uphold the mandate of local governments for planning in their urban areas. The Constitution includes provisions that broadly define the institutional roles and responsibilities of local governments, including the mandate to promote infrastructural and economic development through the formulation and execution of local development plans. The **Local Government Act** assigns local governments with responsibilities for drawing up development plans "for the social, economic and environmental development of the area" and for mobilizing "resources within the local government area for governance and development." **The Physical Planning Act** entrusts local government authorities with the responsibility to prepare a district physical development plan and/or local physical development plan for the district or area, respectively, within its jurisdiction. The composition requirements for planning committees responsible for preparing these development plans helps ensure that local governments build and improve their capacities to implement their mandate.<sup>2</sup> The **Physical Planning Act** also includes provisions that facilitate inter-municipal collaborations for urban

and infrastructure planning as needed through the creation of "joint planning committees".

## 1.1 MULTILEVEL INSTITUTIONAL COORDINATION

The process of installing an urban governance structure in Malawi began in 1987, however the establishment of a hierarchy of urban centres divided into regional, sub-regional, district and rural centres was only partially implemented and the system remained outdated until the formulation of the **National Urban Policy** of 2019.<sup>3</sup> Prior to the formulation of its National Urban Policy, Malawi lacked a spatial governance framework to guide the location of national developments, which resulted in a misallocation of major development projects as well as other coordination and management issues. In light of these challenges, Policy Priority Area 1 of the National Urban Policy was intended to establish a functional urban system by creating a "spatially balanced and integrated hierarchy of urban centres and human settlements".<sup>4</sup> The implementation of this policy priority has required improved communication between urban, peri-urban and rural areas.

The country's decentralized governance structure relies on coordination and cooperation as well as bottom-up community feedback which flows from the local level to both the district and the national governmental entities. Local levels of government operate as committees, namely the Village Development Committee and the Area Development Committee. At the district level, a District Executive Committee exercises authority over the districts. The committees are structured in a hierarchal manner with the District Executive Committee exercising overall responsibility for the day-to-day implementation of the Local Development Plan and serving a technical and

2 Local Government Act (1999). Section 6 (1) (a), (c) and (d).

3 National Urban Policy (2019). Section 1.2.

4 Ibid., Section 1.3.

advisory role to the other committees,<sup>5</sup> though in practice they work alongside each other. Funded by the national Government, the local districts deliver services to their constituents while allowing the Government to focus on broader policy objectives. Thus, both coordination amongst local governing bodies and vertical coordination with the national Government are imperative for effective and efficient service provision.<sup>6</sup> The legal mandates requiring vertical inter-institutional coordination between the national and subnational governments can be found in the Constitution and statutory legislation. However, most of the provisions explicitly addressing multilevel coordination exist in the country's national policy rather than in its legal framework.

The Constitution is the most authoritative source of legal provisions mandating multilevel institutional coordination in Malawi. The Constitution attributes functions to local governments, including the promotion of infrastructural and economic development, which must be coordinated with higher tiers of government. For example, the Constitution states that local governments have the responsibility to present their local development plans to central government authorities.<sup>7</sup> Moreover, local governments are responsible for “the promotion of the awareness of local issues to national Government”.<sup>8</sup> The Constitution also tasks the national Government with “managing the environment responsibly”. This responsibility for environmental stewardship includes preventing environmental degradation, ensuring healthy living/working conditions, managing sustainable

development of natural resources and protecting biodiversity.<sup>9</sup> This language indicates a clear separation of roles, but it does not mandate the coordination of environmental responsibility or other responsibilities.

In the **Physical Planning Act**, the coordination of spatial planning and development projects is stated to be an objective of the **National Physical Development Plan**. The Act states that the purpose of this plan is to “provide a spatial framework for the coordination and implementation of programmes and projects of development” as well as to “assist with the development of an ordered hierarchy of urban and rural growth centres [...]”.<sup>10</sup> The process of preparing the National Physical Development Framework itself remains at the national level and does not require vertical coordination through the input or representation of subnational government entities. Instead, horizontal coordination between the Commissioner for Physical Planning, the Council for Physical Planning and the Minister of Lands, Housing and Urban Development is foreseen.<sup>11</sup> Vertical coordination is required in the preparation of district physical development plans and local physical development plans, where the plan prepared by the local government authority must be submitted to the Commissioner for Physical Housing for approval.<sup>12</sup>

The **National Climate Change Management Policy** mandates the national leadership to engage with local governments and promote community-based public participation.<sup>13</sup> The National Climate Change Management Policy

5 Ministry of Local Government and Rural Development (2013). Guidebook on the Local Government System in Malawi, p. 40.

6 Guidebook on the Local Government System in Malawi, p. 16.

7 Republic of Malawi (Constitution) Act (Act 20 of 1994). Section 146 (2).

8 Ibid., Section 146 (2) (b).

9 Republic of Malawi (Constitution) Act (Act 20 of 1994). Section 13.

10 Physical Planning Act (2016). Section 25(1)(a) and (b).

11 Ibid., Sections 26, 27 and 28.

12 Ibid., Section 31 (3) and 36.

13 Malawi National Climate Change Management Policy (2016). Section 4.1.

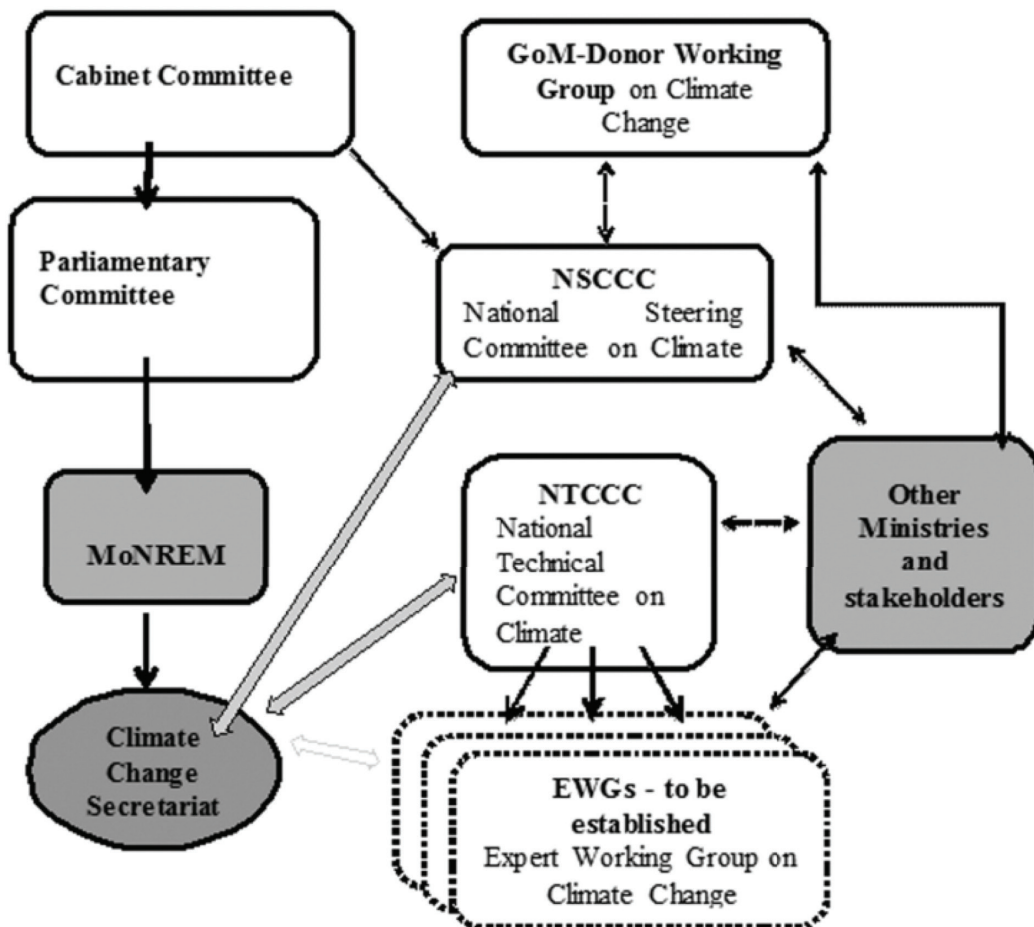


Figure 2: Institutional Coordination Framework for Climate Change. Source: National Climate Change Management Policy, June 2016

further states that the management of climate change policy involves all levels of government and must embrace district and local level governments to produce community-engaged climate action.<sup>14</sup> The **National Land Policy** requires customary land transactions and title registrations to be coordinated vertically.<sup>15</sup> It stipulates that “[...] 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”.<sup>16</sup>

Horizontal coordination amongst ministries at the national level is key to ensuring inter-sectorial coordination and avoiding jurisdictional overlaps. The Constitution assigns Cabinet members (who may be either ministers or deputy ministers of national government agencies or departments) the responsibility for coordinating government activities; as such, successful coordination of climate action and urban planning activities

14 Malawi Climate Change Management Policy, Section 4.1.

15 Malawi National Land Policy (2002). Sections 4.6, 4.18, and 8.7.1 (b), (c) and (d).

16 Ibid., Section 4.18.



across ministries hinges in large part on the efficacy (and political motivation to cooperate) of the Cabinet members leading this work.<sup>17</sup> The **Malawi National Land Policy** coordinates national-level jurisdictions in the land sector by declaring the Ministry of Lands, Housing and Urban Development<sup>18</sup> to be “the principal authority responsible for land administration in Malawi” and requiring other land sector institutions to abide by its directives. The **National Land Policy** specifically provides that “[a]ll other land sector institutions and agencies of the Government are functionally specific land-based appendages and shall perform their statutory duties inconsonant with the policy objectives of [the Ministry of Lands and Housing].”<sup>19</sup> The National Climate Change Management Policy reinforces the powers and responsibilities of sectoral ministries and highlights areas of high priority for the nation where high-level coordination will be necessary. For example, the Ministry of Natural Resources, Energy and Mining is given a “facilitating, coordinating and advisory role in ensuring [the **National Climate Change Management Policy’s**] implementation, setting and enforcement of relevant and acceptable standards.”<sup>20</sup> The ministry is also empowered to delegate which ministry will oversee the institutional coordination framework.

In terms of intra-metropolitan coordination – meaning coordination among local jurisdictions that belong to the same metropolitan area – the **Physical Planning Act** of 2016 calls for the establishment of joint committees where an area earmarked for physical development lies within

17 Constitution of Malawi, Section 96.

18 The Ministry of Lands, Housing and Urban Development existed as the Ministry of Lands and Housing in 2001 when the National Land Policy was issued.

19 Malawi National Land Policy (2002). Section 5.2.1.

20 National Climate Change Management Policy (2016). Section 1.4.

the boundaries of two or more local government authorities.<sup>21</sup> The **National Urban Policy** serves as a guide for national leaders on how they can facilitate metropolitan coordination locally. It states that the Government should “initiate joint planning and implementation of urban programmes in peri-urban areas”.<sup>22</sup> Additionally, it has instructions for national leaders to “[s]upport [the] establishment of urban development positions in each local council” as well as to “[e]nsure [the] coordination of urban development stakeholders”.<sup>23</sup>

Certain national policies instruct leaders and ministries to facilitate coordination horizontally across the local level of government, such as between neighbouring cities and rural areas that are part of the same economic, social or environmental functional areas, as well as between departments at the local level. For example, the **Climate Change Implementation, Monitoring and Evaluation Strategy** of 2016 compels the Government to “[p]romote collaboration among sectors on [the] prioritization of climate-related sectoral interventions”.<sup>24</sup>

The **National Land Policy** contains more detailed legal mandates on horizontal coordination across local government and districts. For example, the policy states that “[c]learance 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”.<sup>25</sup> It also states that “[m]ajor urban areas and all the designated town planning areas in Malawi have planning committees responsible

21 Physical Planning Act (2016). Section 19 (2).

22 Ibid., Section 4 (1) (14).

23 Malawi National Urban Policy (2019). Section 4.1.6.

24 Climate Change Implementation, Monitoring and Evaluation Strategy (2016). Objective 3, Strategy 1.

25 Malawi National Land Policy (2002). Section 5.10 (2) (a).

for ensuring that development in the urban areas conforms to the requirements of either the Urban Structure Plan or the Outline Zoning Plans”.<sup>26</sup> The **National Land Policy** also instructs each government department or other entity on the District Development and Planning Committee to be responsible for monitoring all land-related activity in their area of responsibility<sup>27</sup> and clearly outlines land management functions at the village, group village and traditional authority levels.<sup>28</sup>

The **Local Government Act** assigns local councils the responsibility to formulate, approve and execute district development plans, which suggests that coordination among the various councils comprising a district is implicitly required and is expected to accomplish a larger district goal or project.<sup>29</sup> Moreover, the Local Government Act specifically has a requirement for local assemblies to cooperate “in order to learn from their experiences and exchange ideas”.<sup>30</sup> However, the Act does not specify how the councils will be held accountable and, notably, it does not articulate any mandate for coordination among departments within a given council.

## 1.2 PARTICIPATORY GOVERNANCE

The constitution-making process in Malawi was propelled by a citizen referendum on a multiparty system, which resulted in the one-party system. The democratic and participatory spirit of the Constitution has endured implementation challenges, such as long periods without local

elections.<sup>31</sup> Notwithstanding these challenges, the Constitution establishes clear participatory principles which reflect the nature of the document’s development. Section 40 of the Constitution guarantees the individual right to participate in government and policy-making and local government.<sup>32</sup> Section 146 mandates local governments with responsibility for “the consolidation and promotion of local democratic institutions and democratic participation”.<sup>33</sup>

At the local level, the Local Government Act provides that the “[Local] Council shall [...] consolidate and promote local democratic institutions and democratic participation”.<sup>34</sup> With respect to environmental management, the **Environment Management Act** includes provisions which support public participation in urban planning to address climate change and links these provisions to the principles of upholding democratic participatory politics. Specifically, it states that “every person required under any written law to perform functions relating to the protection and management of the environment or conservation and the sustainable utilization of natural resources shall take such steps and measures as are necessary for [...] promoting public awareness and participation in the formulation and implementation of environmental and conservation policies of the Government”.<sup>35</sup>

Furthermore, the country’s urban development legislation facilitates the identification and involvement of local stakeholders, social

26 Malawi National Land Policy (2002). Section 5.12 (4).

27 Ibid., Section 10.4 (1) (b) and (c).

28 Ibid., Section 5.7 (2) and 5.10 (2) (c).

29 Local Government Act (1998). Section 6 (1) (c).

30 Ibid., Section 6 (1) (h).

31 Matteo, N. and T. Martina (2017). Societal engagement, democratic transition and constitutional implementation in Malawi. In: Public Participation in African Constitutionalism (pp. 243–257). Routledge Press.

32 Constitution of the Republic of Malawi (1994). Section 40 (1) (c).

33 Ibid., Section 124 (2) (c).

34 Local Government Act (1998). Section 6 (b).

35 Environment Management Act (2017). Section 3 (2) (e).

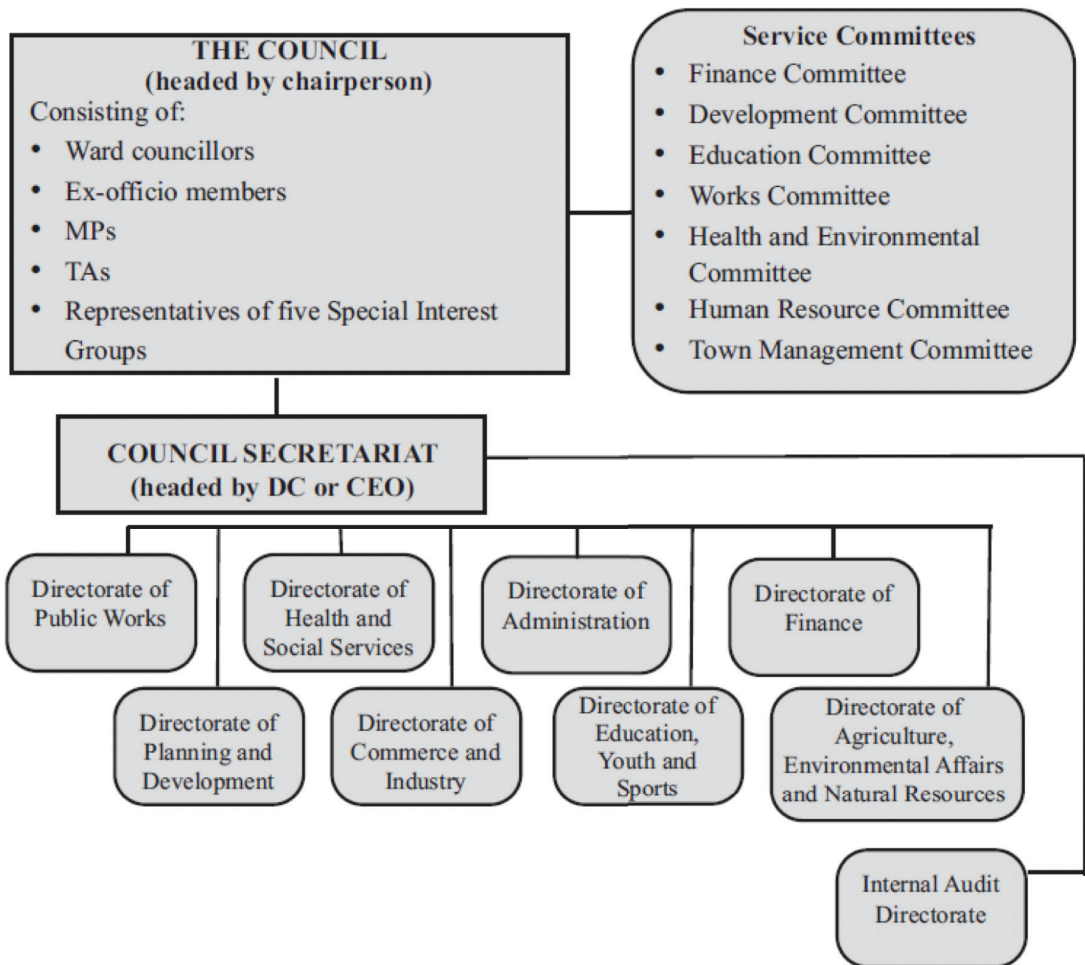


Figure 3 : The organogram for local councils in Malawi. Source: Guidebook on The Local Government System in Malawi, 2013

societies, and businesses in the urban planning process and climate change policymaking. The **Physical Planning Act** empowers the competent planning authority to “seek such information and opinions and consult with such persons and organizations as may be necessary to ensure the proper and expeditious preparation of a plan and all such persons and organizations shall to the extent that they are able, comply with such requests for information and opinions”.<sup>36</sup> When a plan is being prepared which involves

36 Physical Planning Act (2016). Section 22 (2).

land acquisition, land readjustment and/or the relocation of people from their homes or places of work, the competent authority is obliged to “cause the substance of those proposals in the plan to be made known throughout the area of the plan in such manner as is likely to be effective for the purpose of bringing the proposals to the attention of all persons affected by them and shall consider and take into account any representations made concerning the proposals”.<sup>37</sup>

37 Ibid., Section 22 (3).

The **National Urban Policy**, which was validated by stakeholders who participated in the third session of the **Malawi Urban Forum** in August 2018 and was thereafter published in 2019, also contains provisions regarding the identification of stakeholders in urban development processes. The policy refers to the identification of participants in decision-making and calls for inclusive public participation to remedy the fact that “urbanization in Malawi is not happening inclusively, with about 70 per cent of residents living in informal settlements characterized by poor access to basic services and infrastructure. There is limited participation in urban planning and development by the youth, women and other vulnerable groups”.<sup>38</sup> **The National Urban Policy** also calls for “transparency, accountability and democratic decision- making” and the “participation of non-state actors, including professional bodies in urban development issues” to improve the urban governance system in Malawi. The policy explicitly refers to institutional coordination and a policy coherence mechanism that promotes citizen participation in urban development.<sup>39</sup> It also seeks to give non-citizens, as well as marginalized groups, the opportunity to participate in the development of city regulations. The policy seeks to promote the participation of private sector actors, such as professional bodies, in urban development issues and to ensure the participation of vulnerable groups such as, inter alia, young people, the elderly, women and the disabled in the formulation and implementation of urban development programmes.<sup>40</sup>

Provisions promoting stakeholder and community identification are present in other

38 National Urban Policy of Malawi (2019). chapter 1.2.

39 Ibid., Chapter 2.3 (ii).

40 Ibid., Chapter 3.2.1 (vii) and 3.7.1 (ii).

pieces of law and policy as well. The National Climate Change Management Policy seeks to empower vulnerable groups such as women and girls through their involvement in planning and implementing climate change-adaptation interventions. Meanwhile, the **Land Survey Act** of 2016 requires the composition of the Malawi Geographic Information Council to uphold gender parity and include various stakeholders including those from private and public sectors, and universities.<sup>41</sup>

To foster public access to information in the planning process, the Physical Planning Act specifies that all plans (excepting the National Physical Development Plan) should have a public inspection period and requires that plans be deposited at the office of the local government for inspection by any interested person.<sup>42</sup> A formal public notice which indicates “the period in which any person may inspect and make representations on a plan” is required to be published in the Gazette and a newspaper in general circulation in Malawi. The competent planning authority is also empowered – but not required – to “hold meetings with any persons or organizations for the purpose of explaining the proposed plans and receiving representations and comments thereon”.<sup>43</sup> At the end of the public inspection period, the competent local authority submits the plan along with all representations and comments made by interested parties and the authority’s own recommendations to the Commissioner for Physical Planning for consideration and approval.<sup>44</sup>

Legal provisions linking participatory processes to specific community needs are found in

41 Land Survey Act (20016), Section 56 (b).

42 Ibid., Section 22 (3).

43 Ibid., Section 22 (4).

44 Ibid., Section 22 (5).

the country's land management legislation. **The Land Act** broadly provides that land-use designations are intended to benefit the community as a whole.<sup>45</sup> However, the Act does not specify which community needs will be addressed or in what way they will be addressed to benefit the community as a whole. The National Land Policy states that planning for land development or land upgrading should be done by the authorities with the participation of residents and community organizations.<sup>46</sup> In addition, the policy requires the exploration of community-based approaches for the review and amendment of the **Land Survey Act** to reflect new approaches to land policy.<sup>47</sup> The policy also indicates that land-use planning should be a dual process in which communities are sufficiently involved by providing local knowledge about their environment and existing land-use patterns.<sup>48</sup>

There are also several legal provisions requiring the consideration of and response to community demands and priorities. Chief among these is the **National Land Policy**, which indicates that the power to allocate land rests with the respective community leaders. This is a measure taken to ease growing land pressure in areas prone to conflict.<sup>49</sup> Additionally, the policy states that plans will contain guidelines for better use and management of land resources. The **National Urban Policy** promotes social inclusion through civic engagement programmes focusing on health education programmes and urban design addressing the diverse needs of target groups.<sup>50</sup> The **National Climate Change Management Policy** has provisions for adequate community participation and private sector involvement in

climate change mitigation as well as to promote community participation in climate compatible development.

Concerning access to dispute-resolution or appeals mechanisms, the Constitution functions as the "supreme arbiter and ultimate source of authority" in the interpretation of all laws and in the resolution of disputes.<sup>51</sup> The Constitution obliges the Government to promote the welfare and development of the country through, inter alia, the peaceful settlement of disputes using alternative dispute-resolution mechanisms, including negotiation, good offices, mediation, conciliation and arbitration.<sup>52</sup> This provision implicitly promotes access to alternative dispute-resolution mechanisms as they tend to be more convenient and less expensive than litigation and formal judicial proceedings. At the highest level, the Judiciary of Malawi is composed of the Supreme Court of Appeal, which hears appeals of decisions of the High Court. The Constitution authorizes the President to refer disputes of a constitutional nature to the High Court.<sup>53</sup> Subordinate courts exist throughout the country in accordance with statutory law; these may include traditional or local courts presided over by laypersons or chiefs.<sup>54</sup> Again, this recognition of informal or customary dispute resolution fosters increased access to justice.

In the context of spatial planning and urban development, the **Physical Planning Act** has provisions for an appeals mechanism to contest decisions related to development permissions, completion notices, enforcement notices, stop notices and "special areas" along with associated orders (e.g., declaration of special areas, improvement area order, building preservation

45 Land Act (2016), Section 17.

46 Malawi National Land Policy (2002). Section 6.11 (2).

47 Ibid., Section 7.2.2 (a).

48 Ibid., Section 6.5.1 (a).

49 Malawi National Land Policy (2002). Section 6.5.1 (b).

50 Malawi National Urban Policy (2019). Section 3.7.

51 Constitution of Malawi (1994). Section 10.

52 Ibid., Section 13 (l).

53 Ibid., Section 10.

54 Ibid.

order and accelerated development area order).<sup>55</sup> These appeals are submitted to the local council; the decision of the council can be further appealed to the High Court for judicial review within 30 days of notice of the council decision.<sup>56</sup> However, the Physical Planning Act does not include provisions for the appeal of decisions related to the approval of the national, district or local physical development plans, either in part or whole.

The **Local Government Act** guarantees the right of an individual to appeal certain decisions of the local council, or other competent local authority, to the Minister of Local Government and, thereafter, to the High Court for judicial review.<sup>57</sup> These include the decision to refuse a licence to operate a market, the decision of the Local Government Finance Committee to disallow any item of expenditure or surcharge an individual for loss or deficiency incurred upon the local council, and decisions regarding the valuation of private property for local taxation purposes. In the case of the latter, the Act establishes a Valuation Tribunal which considers appeals made by “an aggrieved person who is not satisfied with the decision of the valuer”.<sup>58</sup>

Similarly, the **Environment Management Act** of 2017 grants people deemed to be in violation of the Act the right to appeal any violation notice within 30 days of the date the notice was issued.<sup>59</sup> The Act also establishes an Environmental Tribunal which “consider[s] appeals against any decision or action of the [Malawi Environment Protection] Authority, lead agency, Director General [of the Malawi Environment Protection

Authority] or [environmental] inspector”.<sup>60</sup> The tribunal practices constitutional adjudication in its mandate to “hear and determine petitions on violation of the right to a clean and healthy environment or any other provision of [the Environment Management] Act and any written law relating to environment and natural resources management”. Finally, the tribunal “receive[s] complaints from any person, lead agencies, the private sector or non-government organizations relating to implementation and enforcement of environment and natural resources management policies and legislation”.<sup>61</sup> As an ad hoc dispute-resolution mechanism, the Environmental Tribunal is not bound by rules of evidence and is authorized to make its own rules of procedure. These can include declaring any activity or practice that violates any provision of the Environment Management Act or other written law to be illegal and void, as well as ordering a remedy, such as compensation and/or an injunction or similar order.<sup>62</sup> The decisions of the tribunal can be appealed to the High Court on a point of law within 30 days from the date of the tribunal’s decision.<sup>63</sup>

Other dispute-resolution or appeals mechanisms in the context of land disputes are provided for in the **Registered Land Act** of 2016, which requires disputes over land boundaries to be ultimately determined by the Registrar through reference to the registry map and other governmental records.<sup>64</sup> Meanwhile, the **Customary Land Act** of 2016 regulates the resolution of disputes or appeals of decisions related to customary land. Traditional authorities managing the day-to-day use of land designated as customary land

55 Physical Planning Act (2016). Section 71.

56 Ibid., Section 72.

57 Local Government Act (1998). Sections 11, 55 and 78.

58 Local Government Act (1998). Section 78C (1).

59 Environment Management Act (2017). Section 72 (7).

60 Ibid., Section 107.

61 Ibid., Section 107 (1).

62 Ibid., Section 108 (1) and (2).

63 Ibid., Section 108 (4).

64 Malawi Registered Land Act (2014, amended 2017). Section 18 (2).

may enter into agreements with one another “concerning the use by any one or more groups of persons, of land traditionally used by those groups, being the land which is partly within the jurisdiction of one Traditional Land Management Area and partly within the jurisdiction of another Traditional Land Management Area”.<sup>65</sup> Land committees are responsible for adjudication in Traditional Management Areas, while a customary land tribunal is established in Traditional Management Areas to oversee the adjudication of disputes within the Traditional Management Area.<sup>66</sup> Local government authorities exercise jurisdiction to adjudicate competing land interests over disputed land that is not entirely within Traditional Management Areas. The **Customary Land Act** also establishes a District Land Tribunal, appeals from which are overseen by the Central Land Board at a national level; however, it is not clear which types of cases are adjudicated by the District Tribunal and which by local government authorities.<sup>67</sup> The law outlines the functions and operation of both the land tribunals and land committees.<sup>68</sup>

There are other legal provisions that grant access to dispute or appeals mechanisms for land boundary disputes. **The National Land Policy**, which led to the enactment the Traditional Leaders Accountability Law,<sup>69</sup> dictates land-dispute settlements and provides for dispute and appeals mechanisms for boundary disputes. For example, the National Land Policy contains details on new dispute-resolution mechanisms to address formalizing customary land administrator roles, as well as new mechanisms that offer spousal and child support for navigating customary claims to

65 Customary Land Act (2016). Section 12 (1).

66 Customary Land Act (2016). Sections 37 (3) and 46 (1).

67 Ibid., Sections 37 (2) and 44 (1).

68 Ibid., Sections 5, 6, 7 and 49.

69 Malawi National Land Policy (2002). Section 5.10 (2) (b).

inherited land.<sup>70</sup>

### 1.3 DATA COLLECTION AND SHARING

There are very few existing data and information collection mechanisms provided for by law in Malawi that improve the collection, organization and consistency of data relevant to urban and climate planning. **The Constitution, the Local Government Act, the Environment Management Act, the National Urban Policy** and the 2013 **Guidebook on the Local Government System in Malawi** do not have any sections, provisions or guidelines for a structured, binding policy of data collection and sharing amongst various levels of the country’s governance system. However, the **National Land Policy** and **National Climate Change Management Policy** include several provisions that reference the implementation of or need for data collection and sharing mechanisms.

The **National Land Policy** specifically acknowledges the lack of data collection and sharing structures and emphasizes the importance of effective and accurate land information systems for thorough and effective planning. The policy states that 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” and, as such, “an accurate and complete database on land is essential for effective land management in Malawi.”<sup>71</sup> The **National Land Policy** further cites the commitment of the Government to developing a “computerized land information

70 Ibid., Section E.

71 Ibid., Section 6.

management system with current technology”.<sup>72</sup>

With the National Land Policy, the country’s priorities in terms of data are oriented toward modernizing the existing centralized manual systems of land information data collection and storage. The policy recognizes that with the rapid urbanization and formalization of development, one of the biggest challenges the country will face is the lack of a modernized data management and storage system capable of processing significantly higher volumes of data.<sup>73</sup> Most of the provisions outlined in the National Land Policy relate to optimizing the efficiency of existing data collection and management systems so that information collected in a decentralized fashion can be centrally managed to facilitate public access to land information.

While the end goal of such provisions is informational transparency and ease of access to information for the people of Malawi, these national policy commitments do not directly translate to legal provisions requiring that data collected to be shared in vertical, horizontal and local structures within the Government. For example, Section 5.5.1(a) of the **National Land Policy** states that “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”. This policy provision seeks to standardize the structure of data collection regarding customary land transactions, but until the policy provision is adopted as a provision of law it is not formally required that records of customary land transactions be shared between local, subnational and national levels.<sup>74</sup> Section 5.14(1)(b) of the policy describes a legal provision requiring Traditional Authorities

<sup>72</sup> Ibid.

<sup>73</sup> Malawi National Land Policy (2002).

<sup>74</sup> Ibid., Section 5.



Young boy carrying two jugs of water in Dzaleka, Malawi by Daniel Mitombosola source : Unsplash



to register land transactions taking place within their jurisdiction, “maintaining a Traditional Land Records Storage and Management System”.<sup>75</sup> Though the National Land Policy calls on the Government to develop a legal provision requiring that such a data network be created, the policy itself is not legally binding and, moreover, does not specify a legal provision outlining how or if this network will be shared.

The **National Land Policy** also makes an implicit commitment to developing public policy – and eventually regulation – which defines a formal data sharing process. Section 6.16 states that “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”. The policy describes various mechanisms to be used to develop a comprehensive inventory of geographic information, termed “a multiple access Land Information System”.<sup>76</sup> The Ministry of Lands is tasked with developing a national land information management system to coordinate its actions with other land sector agencies.<sup>77</sup> The ministry is also made responsible for establishing the Malawi Geo-data Coordinating Committee, comprised of senior representatives from all land sector agencies tasked with advising on the creation of the land information management system for the efficient dissemination of land information to the public and private sectors.<sup>78</sup>

The National Land Policy prioritizes the modernization of the records section of the Department of Surveys with a view to “establishing a Land Resource Information System in liaison with other land sector agencies”. It states that

75 Ibid.

76 Ibid., Section 6.

77 Ibid.

78 Ibid.

digital mapping services will be developed as a matter of public policy to promote the widespread sharing of geographic information.<sup>79</sup> While the policy emphasizes that the Government is aware that data sharing is a critical next step and is committed to a vision of a comprehensive public digital data network once the systems used for data collection are modernized, the policy provisions remain vague as to the exact structure of how data will eventually be shared. The policy cites which institutions at the national level will be responsible for the creation of data networks but does not include prescriptions for legal provisions requiring that the data collected and fed into these networks be shared among subnational and local governments in the country.

The **Land Survey Act** requires that spatial data should be aligned with national standards, and centralized and decentralized spatial data access points and nodes should be established and maintained. However, coordination among national administrations and local governments, or among local agencies, is not specifically required.

The **National Climate Change Management Policy** includes provisions on knowledge management and data collection; however it does not legally require sharing data vertically, horizontally or locally within the structure of the country’s systems of governance. Objectives and strategies cited in the Climate Change Implementation, Monitoring and Evaluation Strategy, meant to ensure the implementation of the National Climate Change Management Policy, are vague even in their requirement of data collection processes relative to policy priority areas. For example, the National Climate Change Management Policy calls for

79 Malawi National Land Policy (2002). Section 7.

“mechanisms that will utilize early warning systems on adverse weather, pests and diseases occurrence which will also provide up-to-date information and decision support tools to assess the vulnerability of farmers and inform farm management decisions” to be developed as a priority matter of national public policy.<sup>80</sup> However, the digitalization and sharing of data from those mechanisms across various vertical, horizontal and local scales of governance are not outlined or legally required. Similarly, the policy also indicates that the promotion of “knowledge management through improved data collection, analysis and application for evidence-informed adaptation and mitigation” is a priority in national public policy. The strategy to accomplish this objective is to encourage the “acquisition, maintenance and servicing of weather and environmental[ly] friendly/climate compatible technologies to support evidence-based decision making in mitigation and adaptation, including early warning”.<sup>81</sup>

While encouraging these practices in the early stages of addressing climate change is commendable given the financial capability of the Government, legal provisions standardizing the collection of this data and mandates outlining how exactly it will be shared are missing. Only one strategy in the Climate Change Implementation, Monitoring and Evaluation Strategy for the **National Climate Change Management Policy** outlines a process of data collection and sharing between various governmental sectors.<sup>82</sup> The strategy describes a need to “harmonize data collection to improve linkages among

80 National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016). Policy Climate Adaptation, Objective 3, Strategy 1.

81 Ibid., Policy Research, Technology Development and Transfer, and Systematic Observation, Objective 1, Strategy 1.

82 National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016). Policy Climate Adaptation, Objective 3, Strategy 5.

all departments affected by climate change such as the Departments of Energy, Forestry, Water, Agriculture, Disaster Risk Reduction and Health”.<sup>83</sup> While this indicates a public policy commitment to standardizing data collection methods and clearly strengthen data-sharing linkages between various national government departments, there is no legal framework that requires this coordination in data collection and sharing to be maintained.

## 1.4 LOCAL GOVERNMENTS' MANDATE FOR URBAN PLANNING IN URBAN AREAS

The **Constitution** includes provisions that broadly define the institutional roles and responsibilities of local governments. Section 146(2) specifically calls for local government authorities to promote infrastructural and economic development through the formulation and execution of local development plans and the encouragement of business enterprise.<sup>84</sup> Further, local government is responsible for presenting local development plans to central government authorities and promoting awareness of local issues in the national Government. Finally, the Constitution states that local government is constitutionally obligated to achieve the consolidation and promotion of local democratic institutions and democratic participation, and to take care of other functions such as birth and death registrations and the provision of local services.

The Constitution also promotes institutional decentralization, enjoining the Parliament to “provide that issues of local policy and administration be decided on at local levels under the supervision of local government

83 Ibid.

84 Constitution of Malawi (1994). Section 146.



Lake Malawi Sunset by Gift Bwanal, source: unsplash

authorities” where possible.<sup>85</sup> This principle of decentralization applies to financial matters as well. The Constitution establishes a **National Local Government Finance Committee** and obliges the Government to “ensure that there is adequate provision of resources necessary for the proper exercise of local government functions”.<sup>86</sup> This provision can also support local government councils in building and improving their capacities to implement their mandates.

More detailed provisions regarding the institutional roles and responsibilities of local government are given in the Local Government Act. The Act divides “local government areas” into districts, towns, cities and municipalities, which are each respectively represented by a district, town, city or municipal council. Local government councils are responsible for, inter alia, making “policy and decisions on local governance and development for the local government area”, promoting “infrastructural and economic development through [...] district development plans”, and mobilizing “resources within the local government area for governance and development”.<sup>87</sup> The Second Schedule to the **Local Government Act** provides the additional functions of the local council, including environmental protection, control of nuisances, roads and streets, public amenities, buildings and structures, markets and retail facilities, fees and charges, housing, and civil offices, halls and public buildings. The Act specifically details a local government’s responsibility to draw up development plans “for the social, economic and environmental development of the area for such periods and in such form as the Minister [of Local Government] may prescribe”.<sup>88</sup> The Act

85 Ibid., Section 146 (3).

86 Ibid., Section 150.

87 Local Government Act (1999). Section 6 (1) (a), (c) and (d).

88 Ibid., Second Schedule, Section 21.

goes on to say that development plans should be prepared in conjunction and consultation with other agencies having a public responsibility for or charged with producing plans for development whether generally or specifically [...]”. Furthermore, Section 6(c) of the Act facilitates the collaboration of local governments for urban and infrastructure planning through the promotion of district development plans. These plans demand coordination among municipalities “to promote infrastructure and economic development”.<sup>89</sup>

The **Local Government Act** does not include explicit provisions that require local governments to build and improve their capacities to implement mandates, however the Act gives local government councils the power to borrow or lend money, to acquire or dispose of property and property rights, and to appoint and employ “such persons holding a post grade below that of director as necessary for the proper discharge by the council of its functions”. Moreover, the extensive powers and responsibilities entrusted to local councils in the Second Schedule of the Local Government Act may result in local governments building their capacity to implement mandates despite it not being a formal requirement. In fulfilling these responsibilities, the Act allows councils to perform their tasks alone or jointly with another body as it sees fit. Such collaborations can foster capacity development for local government by fostering the exchange of skills and knowledge and access to greater resources. The local council is also empowered to raise revenue through fees and charges which can in turn be used to build capacity.<sup>90</sup>

The **Physical Planning Act** entrusts local

government authorities with the responsibility to prepare a district physical development plan and/or local physical development plan for the district or local area, respectively, within its jurisdiction. While these plans are approved by the commissioner of physical planning, local government authorities retain the right to “review, modify and amend any plan that has been prepared, whether or not it has been approved by the appropriate authority” when the competent local government authority is of the opinion that such changes are necessary to take into account the changing circumstances of the area to which the plan relates.<sup>91</sup> These changes and modifications must then be submitted for approval from the commissioner or minister as the case may be.

Local government authorities must fulfil their planning obligations by appointing a planning committee for its area of jurisdiction; this planning committee serves as the competent planning authority for the area.<sup>92</sup> Provisions as to the composition of planning committees in the case of a city council, municipal council or town council ensure that local governments build and improve their capacities to implement their mandate. The Act requires these committees to consist of the Director of Planning and Development, the Urban Physical Planning Officer, the Urban Lands Officer, the Urban Engineer, the Urban Surveyor, the Urban Water Engineer, the Urban Architect, the Director of Social Services, the Urban Environmental Officer, a member of the Urban Development Committee, a member of the Urban Works Committee, and a registered physical planner in private practice appointed by the commissioner on the recommendation of the Physical Planners

89 Local Government Act (1998). Section 6 (c).

90 Ibid., Second Schedule, Section 13.

91 Physical Planning Act (2016). Section 39 (2).

92 Physical Planning Act (2016). Section 19(1).

Board.<sup>93</sup> Likewise, district planning committees have composition requirements which serve to build their capacities. These committees are required to be composed of the District Physical Planning Officer, the District Lands Officer, the District Engineer, the District Surveyor, the District Agricultural Officer, the District Education Officer, the District Community Development Officer, the District Public Health Officer, the District Environmental Office, a member of the District Development Committee, a member of the District Works Committee and a registered physical planner.<sup>94</sup>

The **Physical Planning Act** also includes provisions that facilitate inter-municipal collaborations for urban and infrastructure planning as and when needed. The Act provides that “where an area earmarked for physical development lies within the boundaries of two or more local government authorities, the respective local government authorities may appoint a joint planning committee”<sup>95</sup> which “may be appointed to exercise powers and duties in respect of more than one local government area”.<sup>96</sup> The ability of local planning authorities to collaborate in the development of physical plans is reinforced in Section 29 of the Act where it specifies that a district physical development plan can be made for more than one district or part of more than one district.<sup>97</sup> The same principle applies to local physical development plans; more than one physical development plan may be applied to any one area at the same time and one local physical development plan may apply to more than one area at the same time.<sup>98</sup>

93 Physical Planning Act (2016). Section 20 (1) (a).

94 Ibid., Section 20 (1) (b).

95 Ibid., Section 19 (2).

96 Ibid., Section 19 (3).

97 Section 29 (2).

98 Ibid., Section 33 (4).

Policy provisions also address the planning mandate of local authorities. The **National Urban Policy** makes reference to local governments establishing and strengthening their urban development committees, but this issue is not elaborated upon.<sup>99</sup> The policy indicates that “local authorities, especially cities and other urban councils, engage actively in physical development planning and produce a range of plans”.<sup>100</sup> According to the National Urban Policy, four local governments had an urban planning directorate in 2019; the policy goal is that 34 local governments adopt urban planning directorates.<sup>101</sup> A review in 2022 revealed that the implementation of this is slow, as the number of urban planning directorates had only increased to six.

The **National Climate Change Management Policy** includes provisions requiring inter-municipal collaboration for urban and infrastructure planning. Objective 3 aims “to ensure that adaptation interventions are local and autonomous and will promote conservation of natural resources, improvement of food security and rural livelihoods, creation of green jobs and address other challenges such as rural-urban migration”.<sup>102</sup>

Furthermore, **the Guidebook on Local Government Systems in Malawi** lays out clear guidelines and a framework on how the country plans to decentralize and achieve connections through local government. The shift to a democratic government allows for the people to vote and have their voices heard in the management of public affairs. This document is powerful because it mandates

99 Malawi National Urban Policy (2019), Chapter 4.

100 Ibid., Chapter 1.

101 Ibid., Annexure 1.

102 Climate Change Implementation, Monitoring and Evaluation Strategy (2016). Policy Climate Adaptation, Objective 3.

local governments to work together to achieve sustainable urban planning.

## RECOMMENDATIONS

### **Multilevel institutional coordination:**

- The government of Malawi should better establish coordination between national and subnational governments as legally mandated in the Constitution. The Local Government Act and the National Urban Policy could better direct coordination amongst different units of government within economic, social or environmental functional areas.
- At same time as providing greater structure in this coordination, the government of Malawi should also increase the capacity and legal duties of local governments to responsibly manage the environment in local development plans.

### **Participatory governance:**

- The Government of Malawi should continue to adopt legislation that identifies stakeholders, provides opportunities across the planning process, considers specific community needs, requires community feedback and grants access to appeals mechanisms.
- At various levels, from the national to the community levels, the identification of stakeholders should be specified in both political processes and planning procedures.
- The involvement of specific stakeholders and attention given to specific community needs should be improved, especially during the planning process. This will increase the

involvement of the people and institutions more beyond proposing a broad concept of participation or collaboration. The Guidebook on the Local Government of Malawi is an excellent example of these key principles and practices being implemented.

### **Data collection and sharing:**

- Issues of data collection and sharing are well understood by policymakers in Malawi, and there is ample evidence to suggest that the Government is committed to modernizing the methods of data collection and storage, given rising volumes of data spurred by the changing role of government in tandem with the rapid pace of development. However, the lack of a clear legal framework for how data will be distributed and exchanged at the local level, between municipalities and jurisdictions within districts, between institutions at the national level, and between national, subnational or local levels of government must be rectified. Without this clear legal framework outlining and requiring various formats of data sharing between different levels of government, the stated aims of data transparency, public access and better management of natural resources for all cannot be accomplished.
- It is recommended that the Government accelerate data collection related to urban and climate planning throughout Malawi. Data collection is an important criterion for proper sustainability management and planning. This provides key information that allows policymakers at all levels to understand the impacts of their and other regulations throughout the country.
- Improving data collection and sharing mechanisms is a challenge given current

resource limitations and access to technology and training in these systems. The provision of externally sourced technical capacity training and funding for technology resources would facilitate these adjustments to improve the Government’s system of data management.

**Local governments’ mandate for spatial planning in urban areas:**

- Economic and infrastructure development goals are embedded in many pieces of Malawi legislation and requirements for coordination of planning and climate change efforts are outlined in the Climate Change Management Policy. However, (1) enabling local governments to create land-use zone schemes, and (2) directly addressing the need to coordinate physical development plans across the region in the Physical Planning Act may bolster the urban planning power of local governments.

**See table 1 for a summary of the main laws, regulations and policies referred to in this chapter.**

**TABLE 1. Referenced legislation and policies (Governance framework for urban and climate planning)**

Legislation	Year
Malawi Constitution	1994
Malawi National Land Policy	2002
Malawi National Urban Policy	2019
Government of Malawi National Climate Change Management Policy	2016
Climate Change Implementation, Monitoring and Evaluation Strategy (IMES)	2016
Environment Management Act	2017
Local Government Amendment Act	2017
Local Government Act	1998
Guidebook on the Local Government System in Malawi	2013
Malawi Land Act	2016
Forestry (Amendment) Act	2016
Physical Planning Act	2016
Customary Land Act	2016
Land Survey Act	2016
Registered Land Act	2016
Land Act	2016



Locals near a water pump, Malawi by Adrian K Mitchell source : flickr

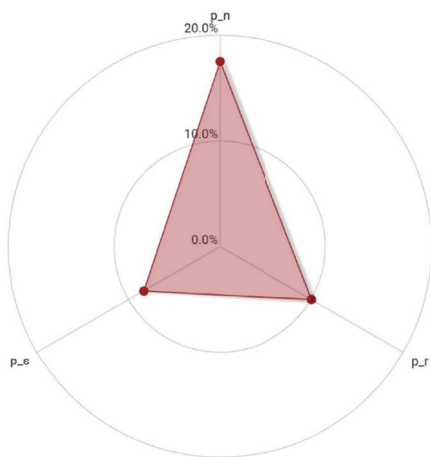


# CHAPTER 2.

# URBAN AND TERRITORIAL PLANNING



## EXECUTIVE SUMMARY



### Planning Instruments

- p\_n National Planning
- p\_r Regional Planning
- p\_s Urban Planning

Figure 4: Rating matrix for Malawi on Urban and Territorial planning

Urban and territorial planning establishes long-term, sustainable frameworks for social, territorial and economic development. The New Urban Agenda specifically sets out the requirement for the integration of climate change adaptation and mitigation considerations and measures into urban and territorial development and planning processes in recognition that cities are both major contributors to climate change and the primary subjects of its effects and risks. In Malawi, a three-tiered planning hierarchy exists at the national, district and local levels and is primarily defined by the **Physical Planning Act**. The Act provides for the formulation of a **National Physical Development Plan**, district

physical development plans and local physical development plans at each of these levels of spatial governance, respectively.

These three plans interact to form a coordinated planning hierarchy in that all district and local physical development plans, as well as any programmes or projects of development, must as far as is practicable, be formulated and prepared to have regard to and take into account the policies and principles of the National Physical Development Plan.<sup>103</sup> The prescribed content of the National Physical Development Plan includes policies, principles and guidelines related to land use designations, transport and infrastructure. However, these provisions do not provide detailed requirements related to land-use typologies or the establishment of an integrated transport network and infrastructure system. Instead, other legal and policy documents, such as **the Land Act, the National Land Policy and the National Urban Policy**, describe land-use classifications at the national level, while the **National Transport Policy, the Malawi Vision 2063** and the **National Urban Policy** more explicitly provide for the establishment of integrated national-level transport and infrastructure systems. The **Physical Planning Act** does not include provisions requiring the coordination of the National Physical Development Plan with national climate plans and policies, however, the **National Climate Change Management Policy**, the **National Adaptation Plan** and the **National Environment Policy** include linkages to national development planning which can facilitate the

<sup>103</sup> Physical Planning Act of 2016, Section 28.

coordination of territorial and climate planning at the national level. The **Physical Planning Act** also does not include provisions requiring the assessment of the climate vulnerability or greenhouse gas emissions associated with the **National Physical Development Plan**.

Subnational territorial planning operates at the district level rather than at the regional level in Malawi. However, the Physical Planning Act states that a district physical development plan can apply to more than one district or parts of more than one district, which in practice would enable such plans to play a role approaching the regional level. District plans are required to “elaborate on, and to apply, the principles and policies of the National Physical Development Plan, if any is in existence in so far as they are relevant to the district”. The Physical Planning Act does not include explicit provisions regarding the coordination of district physical development plans with national climate plans. However, national climate plans are indirectly taken into account at the district planning level to the extent that they are integrated into the National Physical Development Plan, since the district plans must implement the principles and policies of the National Physical Development Plan. Moreover, several national climate plans and policies in Malawi, such as the **National Adaptation Plan** and the **Environment Management Act**, do include provisions for coordination between climate planning and district-level development planning. The latter, notably, requires the preparation of a district environment action plan which “conform[s] with the National Environment Action Plan and the **District Development Plan**”.<sup>104</sup> The Physical Planning Act requires district physical development plans to establish an integrated transport network and

<sup>104</sup> Environment Management Act (2017). Section 29 (1) and (2) (a).

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*The process of preparing the Malawi National Physical Development Plan should require the assessment of the climate vulnerability (resilience of the plan to the effects of climate change) and greenhouse gas emissions associated with the plan’s implementation.*

99

infrastructure system. However, these plans are not required to assess the climate vulnerability or greenhouse gas emissions associated with their implementation.

At the local level, the **Physical Planning Act** provides several urban planning instruments which are considered to be different forms of a local physical development plan. The law specifically defines the urban structure plan, the urban layout plan, the urban civic plan and the subject physical development plan. Of these, the urban structure plan and urban layout plan serve as land-use or zoning plans at the city and neighbourhood levels, respectively. Both of these plans classify land based on what is and is not allowed within in each category. According to the Physical Planning Act, the local physical development plan is required to

include maps and plans to show present and future land and transport uses and the location of proposed development. However, this provision does not explicitly link future land-use planning to the identification of land that is safe from the effects of climate change. Moreover, the Physical Planning Act does not define a specific planning horizon applicable to local physical development plans nor does it explicitly require local development plans to define an urban growth boundary or strategy. In any case, the National Urban Policy and the Environment Management Act do include provisions related to the establishment of urban growth boundaries and management strategies. Malawi does not have explicit legal frameworks in place defining how urban plans should pivot and be re-evaluated as more information regarding climate change impacts becomes available. The absence of requirements regarding planning horizons and the review of plans in light of new climate risks can be attributed to the fact the country is still undergoing a process of administrative modernization and reform. Finally, in the Physical Planning Act, local physical development plans are subordinated to district physical development plans, which are, in turn, subordinated to the **National Physical Development Plan**.

## 2.1 NATIONAL TERRITORIAL PLANNING

The **Physical Planning Act** makes provisions for the formulation of a National Physical Development Plan. As stated in the law, the plan serves three purposes: (1) providing a spatial framework for the coordination and implementation of programmes and projects for development; (2) assisting with the development of an ordered hierarchy of urban and rural growth centres so as to contribute to a balanced pattern of development and an

economical use of resources and facilities; and (3) providing guidelines for the development of services and facilities to desirable standards.<sup>105</sup> All district and local physical development plans, as well as any programmes or projects of development, must as far as is practicable, be formulated and prepared to have regard to and take into account the policies and principles of the National Physical Development Plan.<sup>106</sup>

Land-use designations are included in the prescribed content of the National Physical Development Plan. Specifically, the Act states that the plan “consist(s) of such development statements of policies and principles and such background studies, reports, maps, plans and other materials containing such information and analysis of demographic, economic, energy, environmental, land use and tenure, physical, rural, social welfare, transportation, settlement patterns in rural and urban areas, urban and other like matters as are necessary to enable the plan to achieve its purpose”.<sup>107</sup> The Commissioner of Physical Planning, the Council for Physical Planning and the Minister of Lands, Housing and Urban Development are responsible for preparing, endorsing and approving the National Physical Development Plan, respectively – and any land-use designations contained therein.

The **Land Act and National Land Policy** also establish legal and policy provisions, respectively, to classify land according to its use at the national scale. The former states that “land shall be categorized as either public land or private classes of land”.<sup>108</sup> The Act further clarifies that “[p]ublic land shall be classified either as government land or unallocated customary land. ‘Customary land’ means “all land used for

<sup>105</sup> Physical Planning Act (2016). Section 25 (1).

<sup>106</sup> Ibid., Section 28.

<sup>107</sup> Ibid., Section 24.

<sup>108</sup> Malawi Land Act No.16 (2016). Section 7.

the benefit of the community as a whole and includes unallocated customary land within the boundaries of a traditional land management area”.<sup>109</sup> The **National Land Policy** specifies that “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”.<sup>110</sup> Moreover, the policy requires the development of a national land-use plan and affirms the **National Physical Development Plan**, such that together they guide urban and rural development.

Land use is also referenced in other national-level policies. A stated objective of the National Urban Policy is to “enhance capacity for inclusive, participatory and integrated land use and sustainable human settlements planning and development”.<sup>111</sup> The **National Climate Change Management Policy** states that classifying land may help to reduce deforestation in the country. The **Malawi Vision 2063**, which was adopted in 2021 to replace the Malawi Growth and Development Strategy III, recommends land-use classification as a step in the process of creating preservation areas and zoning designations to support the land-use goals of the country.

Though the **Physical Planning Act** does not specifically require that the National Physical Development Plan should establish an integrated transport and infrastructure network, it does state that the plan should consist of development statements of policies and principles and background studies, reports, maps, plans and other materials containing “such information and analysis of [...] transportation<sup>112</sup> and provide guidelines for the development of services and

facilities to desirable standards”.<sup>113</sup>

The National Urban Policy and the Malawi Vision 2063 include provisions promoting integrated transport and infrastructure networks. The National Urban Policy specifies that the ministry responsible for transport and public works shall:

- i. “Develop a coordinated and efficient urban transport infrastructure.
- ii. Initiate reduced urban transport costs and prices across all modes.
- iii. Improve the safety, security and resilience of urban transport infrastructure and services.
- iv. Develop appropriate building regulations and an enforcement strategy.”<sup>114</sup>

The **Malawi Vision 2063** includes the objective to develop “an integrated transport system that will not only support domestic economic activity but also build global linkages for [the] economy”.<sup>115</sup> It outlines the Government’s goal to establish a “multi-modal transport system” which provides for local needs and transitions the country “from a land-locked to a land-linked economy” through the development of road, rail, air and water transport.<sup>116</sup> This aligns with the need identified in the **National Urban Policy** to promote industrialization through increased transport infrastructure strategically connecting ports of entry.<sup>117</sup> The Malawi Vision 2063 also refers to railroad expansion objectives and indicates the leadership entities responsible for overseeing the country’s transport networks. The Malawi 2063 First 10-Year Implementation Plan (MIP-1) 2021–2030 details proposals to develop bus and railway terminals in cities, to renovate

109 Ibid.

110 Malawi National Land Policy (2002). Section 6.2.2 (3) (a) and (b).

111 National Urban Policy (2019). Section 2.3 (iii).

112 Ibid., Section 24.

113 Physical Planning Act (2016). Section 25 (1).

114 National Urban Policy (2019). Chapter 4, 4.1.1.

115 Malawi Vision 2063, p. 41.

116 Ibid., pp. 42–43.

117 Ibid., p. 18.



Locals discussing restoration practices in Malawi, Africa, by Sabin Ray, World Resources Institute Source : Flickr

and expand existing ports and jetties, and to modernize and expand existing international airports. Furthermore, it includes the plan to establish a rapid transit public transport system in each of the major cities through public-private partnerships.

The Government acknowledges that “an integrated transport system is a catalyst for development”<sup>118</sup> in the **National Transport Policy**, in which the national transport system is described as “a multi-modal transportation system consisting of road, rail, air and inland water transport”.<sup>119</sup> The stated goal of the policy is “to ensure the development of a coordinated and efficient transport system that fosters the safe and competitive operation of viable, affordable, equitable and sustainable transport and infrastructure services”.<sup>120</sup> However, in practice, transport planning in Malawi is not fully coordinated across tiers of government and amongst sectoral institutions; likewise, environmental issues are not sufficiently streamlined in transport planning.

118 National Transport Policy (2019), Foreword, p. iii.

119 Ibid., p. 2.

120 Ibid., Foreword, p. iii.

The **Physical Planning Act** requires that the **National Physical Development Plan** include development statements of policies and principles, as well as background studies, reports, maps and plans containing information and analysis of various pertinent matters, including environmental matters.<sup>121</sup> This provision linking the National Physical Development Plan and environmental policies and plans could serve as a legal basis for the coordination of national territorial planning and climate planning in Malawi. However, no further provisions on this matter are provided in the Act.

Multiple national-level plans and policies exist in Malawi to guide domestic climate action, namely: the **National Climate Change Management Policy**, the **National Adaptation Plan**, the **National Environment Policy** and the **National Climate Change Investment Plan**. Of these, several include linkages to national development planning which can facilitate the coordination of territorial and climate planning at the national level. The **National Adaptation Plan**, for example, includes provisions for the

121 Physical Planning Act (2016). Section 24.

integration of adaption priorities in ministry spending plans. Specifically, it states that “[a]t the central government level the entry points [for climate change adaptation] are at the national development plans and review process [...]”.<sup>122</sup>

The process of integrating climate change adaptation is also stated to include developing an indicator framework and targets for the main ministries relevant to the National Adaptation Plan, as well as establishing working groups in these ministries to mainstream the plan into ministry planning processes. These measures are expected to “result in a matrix of national, sectoral and district development plans that have integrated climate change adaptation”.<sup>123</sup>

The **National Climate Change Management Policy** does not include specific provisions regarding the coordination of climate plans with the National Physical Development Plan, however, it does state that the policy itself “should act as a guide for integrating climate change into development planning and implementation by all stakeholders at local, district and national levels”.<sup>124</sup> One of the expected outcomes of the National Climate Change Management Policy is to mainstream climate change in development policies and planning.<sup>125</sup> In the context of environmental planning, the **National Environment Policy** establishes an objective of “ensur[ing] that national and district development plans integrate environmental concerns, in order to improve environmental management and ensure sensitivity to local concerns and needs”.<sup>126</sup> To facilitate the integration of environmental concerns into development planning at the

national level, the document states that the **National Environment Action Plan** should serve as the key instrument for national environmental planning and the implementation of development programmes.<sup>127</sup>

In addition, climate planning is mainstreamed into the **National Land Policy**, which specifies the goals of “promot[ing] climate change adaptation, mitigation, technology development and transfer and capacity building for sustainable livelihoods through green economy measures for Malawi” and “guid[ing] the programming of interventions for reduction of greenhouse gas emissions into the atmosphere, as well as adapting to the adverse effects and impacts of climatic change and climate variability”.<sup>128</sup> The Malawi Vision 2063 prioritizes climate change response by enhancing climate resilience for climate change impacts. It calls for the development of systems to break the cycle of environmental degradation and increase climate resilience. The **Malawi Vision** 2063 states that this can be achieved through the integration of disaster risk reduction and financing into sustainable development and planning, as well as through the promotion of climate change adaptation, mitigation, technology transfer and capacity building for sustainable livelihoods through green economy measures.

The **Physical Planning Act** does not include provisions requiring the assessment of the climate vulnerability of the National Physical Development Plan. The Implementation, Monitoring and Evaluation Strategy for the National Climate Change Management Policy establishes the Malawi Vulnerability Assessment Committee, which can guide and assist other public or private entities in assessing the climate

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122 Malawi National Adaptation Plan Framework (2020). Section 7.2.

123 Ibid.

124 National Climate Change Management Policy (2016). Foreword.

125 Ibid., Section 2.2, Outcome 6.

126 National Environment Policy (2004), Section 4.3, Objectives.

127 Ibid., Section 4.3(a). Guiding principles.

128 Malawi National Land Policy (2002). Section 10, Article 10.5.2.

vulnerability of plans, programmes and actions.<sup>129</sup> Furthermore, the Environment Management Act does not include provisions for assessing the climate vulnerability of its implementation actions. While climate resilience measures are abundant in the **National Transport Policy**, it does not specify a requirement to assess the climate vulnerability of national transport plans. Likewise, the Malawi Vision 2063 does not mandate climate vulnerability assessments of its implementation.

Monitoring greenhouse gas emissions is not mandated in the Constitution or the **Physical Planning Act** with respect to the **National Physical Development Plan**. However, reducing these emissions is discussed in the Environment Management Act. The Act empowers the Malawi Environment Protection Authority to “develop guidelines and prescribe measures for the control and management of factors affecting climate change”.<sup>130</sup> These guidelines may “prescribe measures for reduction of greenhouse gas emissions from any sector”.<sup>131</sup> Such guidelines could impact land use, infrastructure or transport planning. Several national policies, such as the **Malawi National Climate Change Management Policy** and the Malawi Vision 2063 contain requirements to monitor greenhouse gas emissions, however, these do not require the assessment of emissions associated with national territorial plans. Overall, provisions dealing with greenhouse gas emissions operate at the sectoral level but not in national territorial development plans.

## 2.2 REGIONAL TERRITORIAL PLANNING

129 National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016). Section 2.1. Objective 1.

130 Environment Management Act (2017). Section 54 (1).

131 Ibid., Section 54 (2) (b).

Spatial planning does not operate at the regional level in Malawi. Neither the Constitution nor the **Local Government Act** establishes regional administrative governance, much less regional territorial planning. In terms of public administration, the most important tiers of governance instead exist at the national, district and local levels. At the subnational level, public administration is primarily exercised through Malawi’s 28 districts, although these do correspond to three administratively defined regions (Northern, Central and Southern Malawi).

As defined by the **Physical Planning Act**, the plan on a level below the **National Physical Development Plan** is the **district physical development plan**, which can apply to the whole or part of a district, more than one district, or parts of more than one district.<sup>132</sup> When plans involve several districts, they can serve a de facto regional planning role. The Act requires district physical development plans to establish an integrated transport network and infrastructure system, with one of the stated purposes of such plans being the identification of “growth and service centres, the priorities and possible locations of major public investments and the communication and transportation facilities within the district.”<sup>133</sup> Furthermore, district plans are required to “elaborate on, and to apply, the principles and policies of the **National Physical Development Plan**, if any is in existence in so far as they are relevant to the district”.<sup>134</sup>

The **Physical Planning Act** does not include explicit provisions regarding the coordination of district physical development plans with national climate plans. However, national climate plans are indirectly taken into account at the district planning level to the extent that they are

132 Physical Planning Act (2016). Section 29 (2).

133 Ibid., Section 30 (c).

134 Ibid., Section 30 (a).



Locals accessing a water pump, Malawi by Villages in Partnership source : Flickr

integrated in the **National Physical Development Plan**, since the district plans must implement the principles and policies of the higher tier plan. Moreover, the district physical development plan is required to include “background studies and reports”,<sup>135</sup> which could link to national climate plans and policies, though this is not obligatory.

Several national climate plans and policies in Malawi, however, do include provisions for coordination between climate planning and district-level development planning. The National Adaptation Plan, for example, states that at the local and district levels, “[...] the entry point for [climate change adaptation] will be the district development plan process that starts with the district socioeconomic profile and cascades to the district budget allocation, village and area development planning process, and village action plans”.<sup>136</sup> The **Environment Management Act** requires every district environment sub-committee to prepare a district environment action plan which “conform[s] with the National Environment Action Plan and the district

development plan”.<sup>137</sup> The **National Climate Change Management Policy** specifies that organizations and committees at various levels must ensure that climate change is integrated into their programmes and plans. Similarly, the **Environment Management Act** dictates that environmental conservation is considered at all levels of government.

**District physical development plans** are not required to include assessments of the climate vulnerability or greenhouse gas emissions associated with their implementation. However, district plans are intended to “provide a survey of the conditions, resources and facilities within the district to which it relates”.<sup>138</sup> This survey could assess climate vulnerabilities in the district, though it does not necessitate the assessment of how the plan itself may contribute to or address such vulnerabilities. The requirement that a district physical development plan include “a statement of policies and proposals directed to assist the taking of decisions or the allocation of resources and the location of

135 Ibid., Section 29 (1) (d).

136 Malawi National Adaptation Plan Framework (2020). Section 7.2.

137 Environment Management Act (2017). Section 29 (1) and (2) (a).

138 Physical Planning Act (2016). Section 30 (b).



physical development within the district”<sup>139</sup> could, in practice, require the local authority to justify district planning decisions based on climate vulnerabilities and greenhouse gas emissions reduction. The **Environment Management Act** authorizes the competent authority to establish “guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution”.<sup>140</sup> Such guidelines could require the assessment of climate vulnerability and greenhouse gas emissions associated with district physical development plans.

Though regional planning is largely eschewed in favour of district physical development planning, the **National Urban Policy** identifies the promotion of regional planning and development as a strategy to improve urban-rural linkages.<sup>141</sup> The policy states that strategies such as regional planning can “promote a functional urban system which is crucial for [a] coordinated, integrated and [effective] distribution of national development programmes” and “create a strong symbiotic relationship between urban and peri-urban and rural areas”.<sup>142</sup> **The National Urban Policy** goes so far as to include “regional plans developed” as an output, and the number of such plans developed and/or reviewed as a performance indicator in the monitoring and evaluation plan to the policy.<sup>143</sup> However, the **National Urban Policy** does not provide any guidance on the recommended content of regional plans. Consequently, it does not have any provisions requiring regional territorial plans to establish an integrated transport network and infrastructure system; nor does it explicitly require the coordination of regional territorial

plans with national climate plans. However, in stating that “physical and economic development is guided by a national spatial framework”, the policy implicitly indicates that regional plans would need to be coordinated with the national spatial framework.

## 2.3 SPATIAL PLANS FOR URBAN AREAS

Local physical development planning in Malawi is achieved through several urban planning instruments: the urban structure plan, the urban layout plan, the urban civic plan and the subject physical development plan.<sup>144</sup> The urban structure plan serves as a land-use plan which classifies land based on what is allowed within each land-use category. The urban layout plan functions as a neighbourhood zoning plan applicable to urban areas “in which significant physical development is planned or likely to or has begun to take place or there is need for development or redevelopment or revision or upgrading”.<sup>145</sup> The urban civic plan depicts a more elaborate design of a special area or parts of an urban area showing [the] layout of buildings, car parking lots and landscaping, among other details.<sup>146</sup> Finally, the subject physical development plan acts as a sector-specific urban plan. Any of these plans can be referred to as a “**local physical development plan**”.

Malawi lacks legal provisions explicitly laying out frameworks for setting urban growth boundaries aimed at balancing environmental protection with ensuring that the amount of future buildable land is adequate to meet planned needs. According to the **Physical Planning Act**, the local physical development plan is required to include maps

139 Ibid., Section 29 (1) (b).

140 Environment Management Act (2017). Section 36 (d).

141 National Urban Policy (2019). Section 3.1.2 (iii).

142 Ibid., Section 3.1.2.

143 National Urban Policy (2019). Annex. Monitoring and evaluation plan.

144 Physical Planning Act (2016). Section 33(1).

145 Ibid., Section 33 (1) (b).

146 Ibid., Section 33 (1) (d).

and plans to show present and future land and transport uses and the location of proposed development.<sup>147</sup> However, this provision does not explicitly link future land-use planning to the identification of land that is safe from the effects of climate change. And though land-use planning with respect to future land development and transport needs indirectly results in urban growth management, the Physical Planning Act does not define a specific planning horizon applicable to local physical development plans, nor does it explicitly require local development plans to define an urban growth boundary or strategy.

Likewise, neither the **National Urban Policy** nor the National Land Policy includes any specific regulation or policy addressing the implementation of urban growth boundaries in this specific manner. However, the National Land Policy provides some overarching growth strategies. It stipulates that the “compact form of building in all urban areas” should be promoted by revised spatial planning standards; it further states that more town areas will be zoned for vertical development, and vertical extension “will constitute the principle building form” within central business districts as strategies for controlling urban sprawl.<sup>148</sup> Additionally the National Land Policy addresses “haphazard” urban expansion into “prime agricultural land”, mandating that “deliberate controls” will be applied to discourage urban expansion into such lands.<sup>149</sup> It also mandates the Government to “establish an integrated land management system for sustainable urban development” and “establish an urban observatory for monitoring urban development programmes and ensuring compliance”.<sup>150</sup>

The **Environment Management Act** also does not explicitly require urban growth boundaries or planning horizons. Nevertheless, Section 3.2(h) of the Act mentions consideration of “the rate of population growth and productivity of the available resources” as being critical for the flourishing of future generations in relationship to land management and the conservation of the environment and natural resources.<sup>151</sup> Furthermore, the Act requires that the **National Environment Action Plan**, which is meant to facilitate the integration of “strategies and measures for the protection of the environment into plans and programmes for social and economic development”, be reviewed every five years and re-submitted for approval by the National Assembly.<sup>152</sup> Additionally, the Act requires that district environment action plans must be prepared every five years and reports on the state of the environment in the district should be compiled every two years.<sup>153</sup>

Despite imposing land development controls which include environmental impact considerations, the **Physical Planning Act** does not require local physical development plans to identify land that is safe from the effects of climate change or for plans to be reviewed if new climate risks or climate adaptation options are identified. Instead, the most explicit requirements for assessing and balancing the impacts of climate change with future land needs are found in the **National Land Policy**.<sup>154</sup> It proposes that environmentally fragile areas should be protected from unsuitable development<sup>155</sup> and that “environmental impact assessment studies shall be required before any

147 Ibid., Section 31 (1) (e).

148 Malawi National Land Policy (2002). 6.12.1.

149 Ibid., Section 6.4.1(e).

150 Ibid., Section 4.1.2.

151 Environment Management Act (2017). Section 3(2)(h).

152 Ibid., Section 21.

153 Ibid., Section 19 (a) and (c).

154 Malawi National Land Policy (2002).

155 Ibid., Section 6.14.1.

major land development project is carried out”.<sup>156</sup> It also provides that land suitability studies will be carried out to designate the best use of land under the care of public and private institutions as well as community-based organizations.<sup>157</sup>

The **Environment Management Act** mandates that the competent authority having jurisdiction over the relevant piece of land shall identify riverbanks and lakeshores actively “at risk from environmental degradation or which have other value to the local communities, and shall take necessary measures to minimize or eliminate the risk and protect those areas”.<sup>158</sup> The Environment Management Act similarly specifies that it is the duty of any person who observes the specific environmental degradation event of pollution to report it to the appropriate authority. Following the reporting of such an event, it is the polluter’s responsibility to rehabilitate the degraded land and pay any necessary compensation.<sup>159</sup> These legal provisions explicitly delegate and mandate responsibilities that are generally related to identifying environmental risks, but not as a result of climate change specifically, nor do they require subsequent changes to spatially relevant urban plans based on risks identified.

As climate change rapidly accelerates, so does the need for clearly outlined, legally supported processes for the amendment of urban plans on the identification of new climate risks and climate adaptation options. Malawi does not have explicit legal provisions in place that define how urban plans should pivot and re-evaluate as more information regarding climate change impacts becomes available. The absence of requirements regarding planning horizons and the review of plans in light of new climate

risks can be attributed to the fact the country is still undergoing a process of administrative modernization and reform. The **National Land Policy**, in Section 10.1.2, acknowledges that while the condition of the country’s land is critical to the welfare of society, “compliance monitoring is not normally found in land legislation” and “those mechanisms which do exist are usually weak in any event”.<sup>160</sup> Further, Section 10.1.3 of the policy acknowledges that the “lack of guidance on land, notwithstanding sectoral land use policies, was a void that plagued land decisions in the past”.<sup>161</sup> Data collection systems, including environmental protection compliance and land-use monitoring programs, are outlined in several sections of the National Land Policy, their implementation contributing to the current governmental era of restructuring administrative decentralization within Malawi.

Regarding the coordination of local spatial development and climate planning, the National Land Policy states that supporting “local government authorities to produce Urban State of the Environment Reports and environmental management plans”, in addition to establishing “databases on urban state of the environment”, is still the major priority within environmental protection at the level of a singular urban area.<sup>162</sup> The **Physical Planning Act** requires that local physical development plans include “a statement of the existing conditions of the place or area or subject matter with which the plan is concerned”.<sup>163</sup> This language implies that other plans within the local area, plausibly environmental protection or climate change-related plans, are at least legally required to be acknowledged within urban spatial plans.

156 Ibid., Section 9.8.1.

157 Ibid., Section 9.3.1.

158 Environment Management Act (2017). Section 47(2).

159 Ibid., Sections 42 and 43.

160 Malawi National Land Policy (2002). Section 10.1.2.

161 Ibid., Section 10.1.3.

162 National Urban Policy (2019). Sections 6, 7, and 9.

163 Physical Planning Act (2016). Section 34 (1) (b).

However, the vague nature of the description of information that is legally required to be considered in urban spatial plans, the lack of conditions on when that information is acquired and considered within the planning process, and the aforementioned minimal prescription of planning horizons all make the existing framework for addressing urban climate change in real time inadequate in promoting climate resiliency and low-carbon urban development.

In the Physical Planning Act, local physical development plans are subordinated to district physical development plans,<sup>164</sup> which are, in turn, subordinated to the National Physical Development Plan.<sup>165</sup> At the national level, the Government is clearly committed to outlining an explicit legal hierarchy of policy linkages between national, sub-national and local levels of government. Further, these hierarchical policy linkages extend to the territorial planning and concomitant levels of urban spatial plans. The **National Land Policy** establishes that “[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”.<sup>166</sup> While there are problems with the Government’s implementation of policy in some areas, in other areas the Government’s awareness of its lack of efficient, clear administrative systems with respect to decentralization has resulted in the crystallization of administrative coordination at a high level. As such, there are comprehensive legal provisions requiring that spatially planned development decisions are integrated into a hierarchical network of policy relating to territorial planning.

164 Physical Planning Act (2016). Section 41.

165 Ibid., Section 30 (a).

166 Malawi National Land Policy (2002). Section 6.2.2 (a).

## RECOMMENDATIONS

### National territorial planning:

- The process of preparing the **National Physical Development Plan** should require the assessment of the climate vulnerability (resilience of the plan to the effects of climate change) and greenhouse gas emissions associated with the plan’s implementation. The national Government could provide guidance as to when such assessments should be considered and to what extent an assessment may alter or prevent the implementation of the originally intended actions or development.
- The climate vulnerability of the National Physical Development Plan should be mitigated through the integration of the adaptation priorities from the National Adaptation Plan into national physical development planning.
- Climate vulnerability assessments of the National Physical Development Plan should ensure that infrastructure projects contribute to resilience against climate change-related hazards and extreme weather events. Embedding these goals into previously recommended city master plans can assist in coordination of efforts across regions of Malawi.
- Data on greenhouse gas emissions associated with national physical development planning should be collected to inform ambitious and realistic emissions goals.
- Transport infrastructure networks can

be further integrated at the national level through legal provisions requiring multilevel inter-institutional coordination in transport planning. It is recommended that infrastructure plans are established in coordination with environmental plans at the national level.

- The **Physical Planning Act** should explicitly require the National Physical Development Plan to be coordinated with national climate plans and policies, such as the National Adaptation Plan, the Climate Change Management Policy and the National Urban Policy.

### **Regional territorial planning:**

- Legal provisions defining physical planning at the regional level should be issued, as is recommended by the National Urban Policy.
- Based on the lack of regional territorial plans regarding greenhouse gas emissions, it is recommended that regional governments enact territorial plans which address greenhouse gas emissions. These plans should include elements such as limits on greenhouse gas emissions for part per million; the plans need to specify the limits a district or a region as a whole must to stay within and what the consequences for going above these limits would be.
- It is suggested that there should be more rigorous and effective implementation of land-use planning laws and regulations throughout all regions to ensure the land is being used sustainably and optimally.
- It is suggested that regional planning promote non-motorized transport to reduce emissions. This could take the form of

implementing infrastructure for bicycle mobility and increasing the availability of bikes to individuals in communities.

- It is recommended that legal provisions requiring the assessment of climate vulnerability and greenhouse gas emissions associated with the implementation of district physical development plans be developed.
- The **Physical Planning Act** should explicitly require district physical development plans to be coordinated with national climate plans and policies such as the National Adaptation Plan, the Climate Change Management Policy, and District Environmental Action Plans (as defined in the **Environment Management Act**).

### **Spatial plans for urban areas:**

- The Physical Planning Act should include legal provisions requiring local physical development plans to set urban growth boundaries. Such boundaries should be required to balance environmental protection with ensuring that the amount of buildable land is adequate to meet future development needs. Urban growth boundaries need to be implemented as a method of managing urban sprawl and preventing the overuse and misuse of land.
- Local physical development plans should be required to be prepared with a planning horizon of at least 20 years. Legislation connecting the environmental sector to national development plans should set planning horizons for climate change mitigation and adaptation plans at the local level. Furthermore, the **Physical Planning Act** should require that local

physical development plans adhere to the environmental planning horizons set within environmental protection and management legislation.

- Malawi does not have explicit legal frameworks in place that define how urban plans should be reevaluated and amended as more information regarding climate change risks and impacts become available. It is recommended that the Government develops clearly mandated national sectoral guidelines and intersectoral coordination strategies with regard to data collection systems, including the environmental protection compliance and land-use monitoring programs outlined in the **National Land Policy**.<sup>167</sup>
- The vague nature of the description of information that is legally required to be considered in urban spatial plans, the lack of conditions on when that information is acquired and considered within the planning process, and the aforementioned minimal prescription of planning horizons all make the existing framework for addressing urban climate change in real time problematic and incomplete. It is recommended that the Government amend current legislation regarding information required to be included in urban spatial plans to include these elements, as it will enable all levels of governance to address urban climate change more efficiently.
- The Government has acknowledged the issue of urban sprawl and developed policy provisions advocating for vertical development. It is suggested that on this basis, specific guidance documents

similar to smart growth guidelines could be developed with the involvement of relevant agencies. The development of such guidelines should also be investigated and framed at different levels of the country and regions. These guidelines or plans should have details on how to increase efficiency, promote the optimal use of existing urban resources, reduce the use of arable land and natural resources, and promote economic development.

- It is recommended that legislation as called for in the National Land Policy on a “land management system for sustainable urban development”, an “urban observatory”, and “policy guidance on urban land-use planning and developing standards for it” is developed for the purpose of land-use classification.

**See table 2 for a list of the laws, regulations, and policies referenced in this chapter.**

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<sup>167</sup> Malawi National Land Policy (2002). Sections 6, 7, 9.

**TABLE 2. Referenced legislation (Urban and territorial planning)**

<b>Legislation</b>	<b>Year</b>
Malawi Constitution	1994
Malawi Local Government Act	1998/1999
Malawi National Land Policy	2002
Malawi National Urban Policy	2019
Government of Malawi National Climate Change Management Policy	2016
Climate Change Implementation, Monitoring and Evaluation Strategy (IMES)	2016
Environment Management Act	2017
Malawi Land Act	2016
Forestry (Amendment) Act	2016
Physical Planning Act	2016



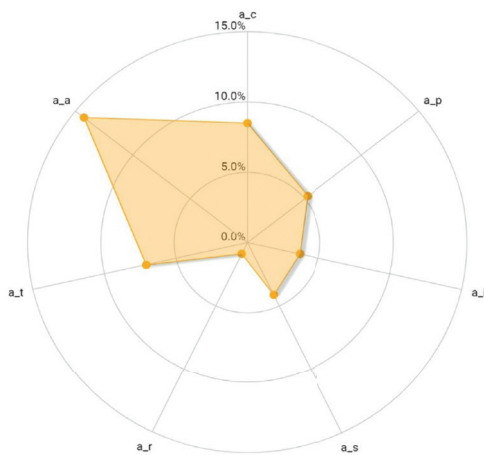
Locals accessing a river, Malawi, by Frédéric MARY source - Flickr



# CHAPTER 3.

# PLANNING FOR ADAPTATION

## EXECUTIVE SUMMARY



### Planning for Adaptation

a_c	Climate Risk Vulnerability
a_p	Adaptation Options
a_i	Implementation of Adaptation Options
a_s	Adaptation of Slums
a_r	Planned Relocations
a_t	Security of Tenure
a_a	Development Approval/Adaptation

**Figure 5: Rating matrix for Malawi on planning for adaptation**

The Paris Agreement requires countries to engage in adaptation planning processes and to implement actions through, among other things, the “assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems”.<sup>168</sup> Though the consideration of climate risks and vulnerability for planned areas and infrastructure is not explicitly mandated in Malawi’s urban planning legislation, the **Environment Management**

168 United Nations Framework Convention on Climate Change (2015). Adoption of the Paris Agreement, 21st Conference of the Parties, Paris: United Nations, Article 7.9 (c).

**Act** requires public institutions to conduct “strategic environmental assessments” of policies, legislation, programmes [or] plans that are likely to have an adverse effect on the management, conservation and enhancement of the environment or sustainable management of natural resources. The Environment Management Act also requires certain public authorities to use inclusive and participatory methods to identify and formulate guidelines to protect environmentally vulnerable areas along riverbanks and lakeshores as well as in hilly and mountainous areas. Furthermore, the **National Adaptation Plan** calls for climate change risk and vulnerability assessments to be carried out which will “entail analysing the current climate to identify vulnerability, risks, along with trends in variables and indices at the national, regional or ecosystem level that could be used to support planning and decision-making”. Provisions related to the identification and consideration of climate risks and vulnerability are also found in the **National Climate Change Management Policy** and its Implementation, Monitoring and Evaluation Strategy as well as in the Safer House Construction Guidelines. However, there are no legal or policy provisions in place in Malawi regarding climate hazard mapping.

Since the identification of climate risks and vulnerabilities are not mandated in the country’s urban and territorial planning legislation, this legal framework likewise does not contain provisions or regulations on how to identify and prioritize adaptation options to address identified risks. However, the **Environment Management**

*Requiring vulnerability assessments and projections as part of district and local physical development plans will empower different levels of sub-national government to make climate-smart planning decisions.*

**Act** requires authorities and lead agencies to “develop guidelines and prescribe measures for the control and management of factors affecting climate change”.<sup>169</sup> These guidelines and measures promote climate adaptation by “identify[ing] activities, practices and substances that cause climate change and measures for reducing or eliminating their effects”.<sup>170</sup> The **Safer House Construction Guidelines** also implicitly require the identification and prioritization of adaptation options related to the adaptation of housing construction to withstand climatic and other natural disasters. Provisions requiring the assessment and prioritization of climate change adaptation options based on time or benefits

<sup>169</sup> Ibid., Section 54 (1).

<sup>170</sup> Ibid., Section 54.2 (a).

and barriers to implementation are largely absent from the legal framework; and while several climate change and sectoral policies promote stakeholder engagement at large, these provisions are not strictly related to the process of identifying and prioritizing climate adaptation options. Infrastructure-based and ecosystem-based adaptation measures are referenced in several laws and policies, such as the **Malawi Vision 2063**, the **National Land Policy** and the **Environment Management Act**, however, they are not addressed together as complementary tools to undertake climate change adaptation. Targets to improve the adaptation of urban areas with measurable and verifiable benchmarks primarily exist within national policy rather than law and are specifically formulated in the Implementation, Monitoring and Evaluation Strategy for the **National Climate Change Management Policy**. Regarding provisions calling for the assessment of an urban plan’s ability to meet the local, sub-national and national Government’s climate change strategies, adaptations, targets and measures, the **Environment Management Act** requires that district environment action plans conform to the **National Environment Action Plan** and the relevant district **physical development plan**.<sup>171</sup>

The implementation of climate adaptation options for planned areas and infrastructure is primarily achieved through legal provisions on total and partial restrictions on land use and development in climate-vulnerable and hazard-prone areas. The **Environment Management Act** and the **Physical Planning Act** both contain provisions which enable authorities to restrict development to protect vulnerable environmental areas and mitigate the risk of unsafe or undesirable construction and land

<sup>171</sup> Environment Management Act (1996). Sections 21, 22 and 23 (1).

development. The **Environment Protection Authority** can restrict development along protected riverbanks and lakeshores, as well as in wetlands and hilly or mountainous areas at risk of environmental degradation; the Environment Protection Authority can also impose land-use and development restrictions on an ad hoc basis through an environmental protection order or an environmental easement. The **Physical Planning Act** includes provisions for the control of development through development permissions, which consider any district and/or local physical development plan applicable to the area and the foreseeable impact of the proposed development on the natural or built environment and on adjacent uses of land. Several other national policies make various references to restricting development in hazard-prone areas. However, provisions regarding public land buffers, riparian setbacks and lakeshore setbacks are only nominally provided for through national policy such as the **National Land Policy** and the **Malawi Growth and Development Strategy III**. There are no legal provisions which require essential infrastructure to be planned outside of high-risk, flood-prone areas; however, the Buildings Bill and the Safer House Construction Guidelines require that developers plan with flood risk in mind where necessary. Currently, no specific provisions of law allow for or require land information systems to integrate climate vulnerabilities and the exposure of land parcels to climate change hazards. Likewise, planned evacuation routes and identified low-risk safety areas for use during extreme weather events are not mentioned in any legislation, though the **Environment Management Act** gives the Environment Protection Authority the responsibility for preparing guidelines or plans for coordination prevention, mitigation and management of environmental emergencies,

including “natural and climate change-related disasters such as floods, cyclones, droughts and major pest infestations, or the introduction and spread of invasive alien species.”

The issue of the uncontrolled growth of slums, informal urban settlements and other vulnerable settlements is mentioned in several pieces of legislation, policies and regulations with a view to supporting the adaptation of these areas. The **Customary Land Act**, the **Physical Planning Act** and the **Land Survey Act** include planning and land management tools for urban expansion, infill or redevelopment of informal settlements. The **Physical Planning Act** in particular has several provisions relevant to the upgrading of informal settlements which may be at risk of climate hazards and other climatic vulnerabilities through the preparation of urban layout plans and the issuance of improvement area orders. Several national policies include recommendations for the establishment of mechanisms to ensure the participation of all owners and residents in the context of slum upgrading and climate change adaptation. Requirements to conduct community-led surveys, maps and household enumerations to facilitate the adaptation of slums and other vulnerable settlements are not present in the country’s legislation or policy. Provisions related to flexible planning and infrastructure standards for the adaptation of slums and other vulnerable settlements are also largely absent from national law and policy. However, the **National Land Policy** does state that special areas will be designated as “low-income housing with simplified building regulations” and that they will be “provided with services that residents need and can afford”.<sup>172</sup> However, the Physical Planning Act fails to include provisions requiring that the affordability of an area subject to an improvement area order be maintained.

<sup>172</sup> Malawi National Land Policy (2002). 6.11.2 (b).

There are limited legal, regulatory or policy provisions that support the relocation of populations from areas at risk of the effects of climate change to ensure their safety and health after all reasonable on-site alternatives and solutions have first been explored. Specifically, no legal or policy document includes requirements to identify and, if necessary, set aside land for relocation in case of extreme weather events. Nor does any law or policy include the requirement that the resettlement land be safe from current and future climate hazards. The **Physical Planning Act** provides that “an improvement area order may make provision for the exercise of powers in respect of [...] the relocation of some or all of the residents of the area either within the area or somewhere else”. This provision could facilitate climate hazard-based relocations, since improvement area orders are meant to address an area of land where further development or development is “difficult to carry out”, or where development has occurred “in a manner detrimental to the environment of the area and the health of the residents of the area or adjacent areas”.<sup>173</sup> The law, however, does not specify a legal requirement to provide the relocation site with livelihood opportunities, water and food security, sanitation, education and health facilities prior to occupation.

Several policies, laws, acts, plans and guidelines in Malawi include formal provisions and regulations to protect the tenure security of people living in slums and other settlements vulnerable to climate change threats. The **National Land Policy**, the **Malawi National Policy on Equalization of Opportunities for Persons with Disabilities of 2006**, the **Malawi Vision 2063**, the **Physical Planning Act** and the **Customary Land Act** all recognize a variety of tenure rights, albeit

to varying degrees. Customary law is recognized in the Constitution, the Land Act, and the Physical Planning Act; customary land rights in particular are regulated under the Customary Land Act. The **Environment Management Act** and **Physical Planning Act** recognize the rights of “occupiers”, defined as “a person in occupation or control of any premises and, in relation to premises different parts of which are occupied by different persons, means the person in occupation or control of each such different part”. Although several laws, policies, acts, plans and guidelines recognize the need to regularize informal land and property rights, only the **Customary Land Act** and **Physical Planning Act** make provisions for informal regularization. Regarding legal provisions that allow a variety of tenure forms – including customary rights, informal tenure rights and occupation – to be recorded in the official land information system, the **Registered Land Act** of 2016, the **Customary Land Act** and the **National Land Policy** all provide for the registration of customary land rights; other forms of tenure which may be susceptible to registration include freehold and leasehold rights. Provisions stipulating the process for conducting evictions are largely absent, though provisions requiring compensation for the forfeiture of formal land rights are incorporated into the Land Act, the **Physical Planning Act**, the **Customary Land Act** and the **Land Acquisition Act**. The Physical Planning Act includes provisions which may enable bona fide occupants of informal settlements which are subject to an improvement area order to be compensated for permanent or temporary relocations. However, there are no legal provisions in force which require compensation for the loss of livelihoods for slum dwellers or for the benefit of host communities which receive resettled people on a large scale. The law offers limited formal appeal processes

173 Malawi 2016 Physical Planning Act, Part VI, Sec 63 (1).

and dispute-resolution mechanisms to redress grievances and resolve land and property disputes related to the adaptation of slums and relocation of vulnerable groups. Apart from the traditional authorities and tribunals specified in the **Customary Land Act** and **National Land Policy**, there are no legal provisions which include alternative dispute-resolution mechanisms for land and property disputes, such as negotiation, mediation and arbitration.

Malawi has several pieces of legislation and policy that link the development approval process to approved urban plans, zoning regulations and collected evidence from climate risk and vulnerability assessments, namely, the **Physical Planning Act**, the **National Urban Policy** and the **National Building Policy**. The Physical Planning Act makes both compliance with approved physical development plans and environmental considerations conditions of being granted a development permission. The Environment Management Act establishes the National Environment Action Plan, which is said to “be binding upon all persons in the public and private sector, including private companies, non-governmental organizations and government departments and agencies.” At the district level, the Act states that “a person shall not implement development activities or projects in any district without consulting the District Environmental Sub-Committee”. While these legal provisions explicitly ensure a linkage between development approval, urban plans, zoning regulations and environmental vulnerability, the scarcity of provisions that are explicitly related to climate risks, vulnerabilities and hazard-prone areas limits the extent to which development controls support climate change adaptation. As such, climate risk and vulnerability assessments are not considered in the standard development approval processes.



Local fisherman, Malawi. Photo by Frédéric MARY via Flickr

The **Physical Planning Act** includes provisions that allow the competent governmental authority to charge developers for the infrastructure costs associated with the proposed development through conditions attached to the approval of development permission applications. With respect to monitoring compliance with the approved development and its conditions, the **Environment Management Act** authorizes the Environment Protection Authority to carry out periodic environmental audits of any project for the purpose of enforcing the conditions of granting a development permission. However, there are limited provisions regarding the monitoring of development to ensure its compliance with conditions related to climate change adaptation. The **Physical Planning Act** contains extensive provisions on the enforcement process for developments not compliant with conditions attached to the approval of their submitted application; meanwhile the **Environment Management Act** outlines how offences of environmental regulations under the Act are managed.

### 3.1 CLIMATE RISKS AND VULNERABILITY FOR PLANNED AREAS AND INFRASTRUCTURE

The urban planning process prescribed by the **Physical Planning Act** does not include requirements explicitly related to climate risk and vulnerability assessments. However, it does state that “a local physical development plans shall include [...] a statement of the existing conditions of the place or area or subject matter with which the plan is concerned”.<sup>174</sup> This statement of existing conditions could be interpreted as requiring an assessment which indicates the current climate vulnerabilities

and risks in the planned area. However, these provisions do not require the consideration of the future conditions of the planned area with respect to climate vulnerabilities and risks. Moreover, the requirement to state the conditions of a planned area does not necessarily require a climate vulnerability assessment, though this interpretation of the law would be a best practice.

The **Environment Management Act** does not explicitly require climate risk and vulnerability assessments for physical development plans; however, the Act does oblige public institutions to conduct “strategic environmental assessments” with respect to physical development plans in certain circumstances. The Act states that any “public institution which intends to develop policies, legislation, programmes [or] plans that are likely to have an adverse effect on the management, conservation and enhancement of the environment or sustainable management of natural resources shall conduct a strategic environmental assessment of the policies, programmes, legislation, development plans and physical plans and submit the findings to the [Malawi Environmental Protection] Authority for approval”.<sup>175</sup> The Act further states that any policy, legislation, programme or plan which has not been approved by the Environmental Protection Authority following the submission of a strategic environmental assessment is prohibited from being adopted or implemented.<sup>176</sup> A strategic environmental assessment is defined by the Act as “an assessment of the positive and adverse effects or impact that the implementation of policies, legislation, programmes or development plans and physical plans has or is likely to have on the protection and conservation of the environment or the sustainable management of

174 Physical Planning Act (2016). Section 34 (1) (b).

175 Environment Management Act (2017). Section 30(1).

176 Ibid., Section 30 (2).

the environment”.<sup>177</sup> As such, the requirement to conduct a strategic environmental assessment in the physical development planning processes will often effectively require the competent planning authorities to assess the climate risks and vulnerabilities associated with the implementation of the draft physical development plan.

In addition, the **Environment Management Act** requires certain public authorities to identify environmentally vulnerable areas. Each District Environment Sub-Committee is obliged to “identify the hilly and mountainous areas which are at risk from environmental degradation” and maintain a register of such areas.<sup>178</sup> This register can inform spatial planning in hilly and mountainous areas. Additionally, the Environment Protection Authority is responsible for identifying the banks of rivers and the shores of lakes within its jurisdiction which are at risk from environmental degradation or which have other value to the local communities; the Authority is then required to “take [the] necessary measures to minimize or eliminate the risk and protect those areas”.<sup>179</sup> This may include declaring protected zones along riverbanks and lakeshores which limit certain “deleterious human activities”; such activities could include specified land uses, land development and other activities related to physical development planning.

The National Adaptation Plan calls for climate change risk and vulnerability assessments to be carried out which will “entail analysing the current climate to identify vulnerability, risks, along with trends in variables and indices at the national, regional or ecosystem level that could be used to support planning and decision making”. The **National Adaptation Plan** states that climate

vulnerabilities will be assessed at sector, sub-national and national levels.<sup>180</sup>

The **Safer House Construction Guidelines** do not explicitly require climate risk and vulnerability assessments as part of the prescribed construction process, however the guidelines do specifically address building practices that reduce vulnerability to flooding, fires, landslides and other natural disasters.<sup>181</sup> Moreover, the guidelines indicate that “site selection should not respond to a single hazard but should take into consideration all the different risks that affect Malawi”.<sup>182</sup> In practice, many of these risks will relate to climate change. As such, the guidelines effectively call for the consideration of climate risks and vulnerabilities in site selection for the housing and construction industry.

The **National Urban Policy** does not include requirements regarding climate change risk or vulnerability assessments, but it does state that sustainable human settlements and natural and human-made disaster resilience are policy objectives.<sup>183</sup> A guiding principle of the **National Urban Policy** also specifically mentions the promotion of sustainable development and reduction of vulnerability to shocks.<sup>184</sup> The policy acknowledges the “weak development control mechanisms” currently in place and “rapid urbanization and urban design that fails to consider disaster risks”, however it does not stipulate requirements or recommendations for the implementation of climate risk and vulnerability assessments to address these issues.<sup>185</sup>

180 Malawi National Adaptation Plan, Section 7.1.3.

181 Safer House Construction Guidelines, Sections 5 and 6.

182 Safer House Construction Guidelines, Section 2.

183 Malawi National Urban Policy (2019). Chapter 2.3: Policy objectives.

184 Malawi National Urban Policy (2019). Chapter 2.4: Guiding principles iv and vii.

185 Malawi National Urban Policy (2019). Preface.

177 Environment Management Act (2017). Section 2.

178 Ibid., Section 50 (1).

179 Ibid., Section 47 (2).

The **National Climate Change Management Policy** specifically details the legal requirements for the methods and processes of conducting risk and vulnerability assessments.<sup>186</sup> The policy tasks the Malawi Vulnerability Assessment Committee with overseeing the Implementation, Monitoring and Evaluation Strategy for vulnerability assessments.<sup>187</sup> Acknowledging numerous risks associated with climate change, this policy and accompanying strategy indicate specific policy priority areas, objectives, strategies, responsible parties and timeframes for implementation. Policy Priority Areas 1 and 6 include vulnerability and risks associated with climate change, including the Household

186 Malawi National Climate Change Management Policy (2016).

187 National Climate Change Management Policy

Implementation, Monitoring and Evaluation Strategy (2016).

Vulnerability Index.<sup>188</sup> This performance indicator is discussed in the section of the Implementation, Monitoring and Evaluation Strategy shown in table 3 below.

The **Environment Management Act** broadly describes the process for public institutions to obtain approval from the Environment Protection Authority to adopt or implement physical development plans through the submission of a strategic environmental assessment report. However, the actual process of undertaking a strategic environmental assessment is not described in the Act. The submission and approval process requires the institution concerned to comply with the recommendations made by the **Environment Protection Authority**

188 Ibid., Section 4.

**TABLE 3. Implementation, Monitoring and Evaluation Strategy – reduced vulnerability to climate change impacts through improved social and ecological resilience. Source: Implementation, Monitoring, and Evaluation Strategy (2016) from the Ministry of Natural Resources, Energy and Mining, and the Malawi Environmental Affairs Department**

Objective	Output	Performance indicator	Target
To ensure that the nation can adjust to changes as a result of climate change	Reduced vulnerability to climate change-related hazards and risks	Household Vulnerability Index (HVI)	1 million people’s vulnerabilities reduced

Objective	Source of verification	Performance indicator
1.76 million people are food and income insecure every year	HVI study report Government reports Research reports District reports Malawi Vulnerability Assessment Committee	Conducive political environment  Effective coordinating structures at the national, district and community level  Availability of funding  Very low or moderate natural related hazards



and its conditions for approval; if the institution concerned and the Environment Protection Authority cannot come to an agreement, then the former can lodge an objection with the minister.<sup>189</sup> This process includes some public participation elements in that the minister can order the Environment Protection Authority to publish – for public review or a public hearing – its decision as to whether the institution concerned is required to conduct a strategic environmental assessment. If the minister orders such a review and/or hearing, it must be conducted before the Environment Protection Authority makes a final determination on the issue.<sup>190</sup>

The **Environment Management Act** also includes requirements to conduct inclusive and participatory vulnerability assessments of hilly and mountainous areas as well as riverbanks and lake shores. In the case of the former, each District Environment Sub-Committee must identify vulnerable hilly or mountainous areas with the assistance and participation of the Local and Environmental and Natural Resources Committee within the district and the relevant lead agencies. The sub-committee must notify the Environment Protection Authority of the vulnerable areas identified and maintain a register of hilly and mountainous areas at risk of environmental degradation.<sup>191</sup> For the identification of “the banks of rivers and the shores of lakes [...] which are at risk from environmental degradation”, the Act tasks the Environment Protection Authority to “take necessary measures to minimize or eliminate the risk and protect those areas” with the participation of various unspecified agencies.<sup>192</sup>

In the **Environment Management Act**, only the

requirements concerning risk assessments of hilly and mountainous areas explicitly include a list of potential hazards which are indicative of the area’s environmental vulnerability. The Act states that a “hilly or mountainous area is at risk from environmental degradation if: (a) it is prone to soil erosion; (b) landslides have occurred in such area; (c) vegetation cover has been removed or is likely to be removed at a faster rate than it is being replaced; or (d) any other land use activity in such area is likely to lead to environmental degradation”.<sup>193</sup>

Several other policies, laws, acts and plans include a list of potential climate hazards, but only the Safer House Construction Guidelines formally require risk and/or vulnerability assessments that identify the hazards. The guidelines state that “[i]t is very important that each risk described in the following paragraphs is not considered as a single factor that might impinge the safety of the house; in fact, the different risks have to be considered all together”.<sup>194</sup> The list of hazards includes floods, landslides, fires, hailstorms, earthquakes, soil erosion and termites, almost all of which are exacerbated by climate change.

**The Malawi Vision 2063** mentions climate risk factors impacting agricultural productivity and environmental sustainability, including soil degradation and drops in water levels, but a comprehensive list is not included nor are requirements to identify hazards.<sup>195</sup>

Climate hazard maps are not explicitly mentioned in the **Physical Planning Act**, the **Environment Management Act** or in any other relevant law or policy. Consequently, there is no mention in any document that hazard maps are to be made publicly available, or that they are to be reviewed every 10 years. However, the

189 Environment Management Act (2017). Section 30.

190 Ibid., Section 30 (7).

191 Environment Management Act (2017). Section 50.

192 Ibid., Section 47 (2).

193 Ibid., Section 50 (2).

194 Safer House Construction Guidelines, Section 1.

195 Malawi’s Vision 2063 (2020). Enabler 7.



**District Environment Action Plan** stipulated in the **Environment Management Act** must be reviewed every five years and is required to “respond to and address environment and natural resources issues raised in the District State of the Environment and Outlook Report”.<sup>196</sup> This report should include a section on “the atmosphere and climate change” and discuss the most pressing climate risks, vulnerabilities and hazards in the district.

Several national policies and guidelines include the requirement to identify people, property and economic sectors that are exposed to risks arising from climate change. The **National Climate Change Management Policy** expresses the Government’s commitment to improving zoning and reducing communities’ land tenure

196 Environment Management Act (2017). Section 29 (1) and 2 (d).

and economic vulnerability to climate hazards by ensuring that settlements and infrastructure are not built on sensitive and disaster-prone areas (by supporting existing land resources and physical planning legislation).<sup>197</sup> The Safer House Construction Guidelines state: “[a] set of different proposals are presented to offer a wide range of alternatives to accommodate the different conditions and the diverse economic difficulties of the Malawian population”.<sup>198</sup>

The **Malawi Vision 2063** identifies and prioritizes national food security as a cross-sectoral issue that is vulnerable to the effects of climate change.<sup>199</sup> To address climatic risks related to food security, such as droughts, water scarcity and irregular rainfall patterns, the **Malawi Vision**

197 Malawi National Climate Change Management Policy (2016).

198 Safer House Construction Guidelines, Executive summary.

199 Malawi Vision 2063, Enabler 56.

2063 states that the country shall ensure efficient, sustainable and reliable irrigation infrastructure will be developed and adopted across the country for enhanced agricultural productivity and full commercialization of the sector. Moreover, it states that Malawi shall no longer depend on rainfall alone or subsistence-level agriculture (crops, aquaculture and livestock) considering the increased climate vulnerabilities and risks affecting this type of agriculture. The objective of this policy is to produce enough food to alleviate national food security needs, with surplus for the manufacturing industry to process into other finished products for import substitution and exports.

Physical development plans – as well as any other legislation, policy, programme or plan which is likely to have an adverse effect on the environment – may be subject to strategic impact assessments under the **Environment Management Act**.<sup>200</sup> Meanwhile, projects, including those related to infrastructure, may be subject to an environmental and social impact assessment, according to the Act.<sup>201</sup> The contents of these assessments are left to be defined by regulatory by-laws; the Act defines an environmental and social impact assessment as “a systematic evaluation of a project to determine its impact on the physical and ecological environment and the conservation of natural resources on the social and socioeconomic fabric of a particular community and any social change process that may be associated with any project”. This definition does not explicitly mention climate vulnerability.<sup>202</sup>

### 3.2 IDENTIFICATION AND PRIORITIZATION OF ADAPTATION

200 Environment Management Act (2017). Section 30.

201 Environment Management Act (2017). Section 31.

202 Ibid., Section 2.

## OPTIONS

Regarding requirements to determine the available adaptation options which can address identified climate risks and vulnerabilities, the **Environment Management Act** requires authorities and lead agencies to “develop guidelines and prescribe measures for the control and management of factors affecting climate change”,<sup>203</sup> and those guidelines and measures shall “identify activities, practices and substances that cause climate change and measures for reducing or eliminating their effects”.<sup>204</sup> **The Environmental Management (Climate Change Fund) Regulations** recommend that adaptation measures be implemented, but specific requirements related to implementation are not defined.<sup>205</sup>

The **National Adaptation Plan** includes provisions which foresee “reviewing and ranking adaptation options based on the climate scenarios produced” in response to climate change vulnerability assessments undertaken. Adaptation options are to be ranked based on the risk, exposure and adaptive capacity of systems, regions or groups, and after this assessment, the most cost-effective adaptation options are selected to reduce the impacts of climate change.<sup>206</sup>

The Safer House Construction Guidelines require the “assess[ment of] the best construction solutions in order to minimize the risks and possible losses” and to “determine the best options in order to deal with the different possible risks”. The guidelines identify the primary climate hazards affecting the

203 Ibid., Section 54 (1).

204 Ibid., Section 54.2 (a).

205 Ibid., Section 57 (e).

206 National Adaptation Plan, Section 7.1.3.

construction sector in Malawi (floods, landslides, fires, windstorms, earthquakes, soil erosion, termites, fires and subsidence) and describe the respective adaptation measures which should be undertaken to protect housing from these hazards.<sup>207</sup> The guidelines state that “[t]he safer house is the house that is able to adapt to the different risks and resist different hazards that might occur frequently or occasionally in the areas”.<sup>208</sup> The **Safer House Construction Guidelines** also consider the assessment of adaptation options based on time, cost, benefits and barriers to implementation, with special attention given to the cost of climate change-adaptation options.<sup>209</sup>

The assessment and prioritization of climate change adaptation options based on time or benefits and barriers to implementation is not mentioned in other pieces of policy or legislation, though the **Malawi Vision 2063** states that producing detailed measures of climate change adaptation’s sectoral impacts by 2063 is one of the country’s goals.<sup>210</sup>

The **National Climate Change Management Policy** requires stakeholders’ engagement in the process of identifying and prioritizing adaptation options. It specifically focuses on ensuring that vulnerable groups, including women and girls, “are engaged and involved in planning and implementing climate change adaptation interventions”. The Implementation, Monitoring and Evaluation Strategy of the policy states that ensuring “adequate stakeholder consultations in EIAs [environmental impact assessments] and climate compatible development by engaging communities in decision making” will be implemented as a strategy to “promote

community participation and involvement in climate compatible development”.<sup>211</sup> Other national policies call for community participation or stakeholder engagement, however they do not focus on climate change adaptation options. The **National Land Policy**, for example, discusses a dual planning process in which “the community participates fully by offering local knowledge of their environment and existing land use patterns”.<sup>212</sup> The **Buildings Bill** of 2020 includes the requirement that developers consult with stakeholders; however, the purpose of this consultation is to ensure that building owners in hazard zones comply with the updated development standards.<sup>213</sup>

Infrastructure-based and ecosystem-based adaptation measures are referenced in several laws and policies, however they are not addressed together as complementary tools to undertake climate change adaptation. The **Malawi Vision 2063** mentions infrastructure-based climate change adaptation but does not address ecosystem-based adaptation measures.<sup>214</sup> The **National Land Policy** provides ecosystem-based measures for environmental protection through the zoning of fragile ecosystems, agricultural areas and lakeshores to prevent development as well as through expert soil management, forestry and crop and animal husbandry. However, these measures are not directly linked to climate change adaptation.<sup>215</sup> Lastly, the **Environment Management Act** calls for “identifying, promoting and integrating traditional knowledge into the conservation and sustainable utilization of the biological diversity

207 Safer House Construction Guidelines (2010). Part 1, p. 35.

208 Ibid.

209 Safer House Construction Guidelines (2010). Part 5.

210 Malawi’s Vision 2063 (2020).

211 Malawi National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy, Section 2.6.4.

212 Malawi National Land Policy (2002). Section 6.5.1.

213 Buildings Bill (2020). Section 31.

214 Malawi Vision 2063 (2020).

215 Malawi National Land Policy (2002). Sections 6.4-7 and 6.11.

of Malawi”.<sup>216</sup>

Indicators and targets with measurable and verifiable benchmarks to improve the adaptation of urban areas exist within national policy rather than law, and are primarily formulated in the Implementation, Monitoring and Evaluation Strategy for the **National Climate Change Management Policy**. This strategy defines the outcome in the area of climate change adaptation as the “reduced vulnerability to climate change impacts through improved social and ecological resilience”. Two strategies for “human settlements” are given under policy objective 1. The first aims to improve zoning and planning to reduce vulnerability of people by ensuring that settlements and infrastructure are not built on sensitive and disaster-prone areas (by supporting existing land resources and physical planning legislations); and the second calls for the development of a human settlement policy to optimize land use and build resilience to climate-related disaster risk. Under the strategy’s policy objective 2, the human settlements strategy is to “improve infrastructure and ensure climate proofing of infrastructure and human settlements”. The third and final adaptation-related policy objective is linked to two further strategies for human settlements: (1) provide incentives for environmentally friendly building technologies; and (2) oblige cities and municipalities to dispose of solid waste in proper sanitary landfills that are, where possible, linked to carbon markets. Performance indicators with targets serve as verifiable benchmarks for the national climate change adaptation outcomes, objectives and strategies. These benchmarks include the Household Vulnerability Index, yield per unit of production, households above the poverty line, use of climate change information in decision-making, cross-sectorial

216 Environment Management Act (1996). Section 35.2 (f).

plans and frameworks for climate change related adaptation, type, quality and quantity of ecosystem services and products, the size of new forest cover and type and quantity of species introduced and conserved.

The **Malawi Vision 2063** also establishes benchmarks related to climate change adaptation. The strategy labelled, Enabler 7, focusses on the agricultural sector to improve community adaptation and resilience in accordance with Goal 13 of the United Nations Sustainable Development Goals.<sup>217</sup> Further, the National Urban Policy sets measurable and verifiable targets for local governments to mainstream climate resilience in urban planning.<sup>218</sup>

Several laws and policies enforce the assessment of the urban plan’s ability to meet the local, sub-regional and national Government climate change strategies, adaptations, targets and measures. The **Environment Management Act** requires that district environment action plans conform with the National Environment Action Plan and the district physical development plan.<sup>219</sup> The **National Land Policy** similarly requires that all development proposed by other rural or urban plans must be in line with the standards set by the **National Land Use and Physical Development Management Plan**.<sup>220</sup> Further, the **National Land Policy** requires that district planning offices are established and directed to monitor local government planning and development actions to ensure they support the Government’s decentralized administration of centralized planning policies.<sup>221</sup> In addition, **Malawi Vision 2063** states that close monitoring,

217 Malawi Growth and Development Strategy III (2017). Annex 6 and 7.

218 Malawi National Urban Policy (2019). Annexure II.

219 Environment Management Act (1996). Sections 21, 22, and 23(1).

220 Malawi National Land Policy (2002).

221 Ibid., Section 6.6.1.

evaluation and management of macroeconomic and fiscal policy instruments, as well as the adoption of disaster risk management and resilience strategies, will be paramount.

### 3.3 IMPLEMENTATION OF IDENTIFIED ADAPTATION OPTIONS

Mechanisms for the implementation of climate change adaptation options are lacking in both specificity and legal force in Malawi. This is due, in part, to the weak linkage between planning law and climate change law and policy in the country as Malawi has quickly undertaken reform to modernize and decentralize its institutional systems in response to rapid population growth. Nonetheless, there are some existing law and policy provisions in place requiring or calling for the implementation of climate change adaptation options. In particular, “mainstreaming” climate change adaptation is referenced in national policies that are meant to guide the country through its current transition towards greater administrative capacity.

In relation to land use and development restrictions, both planning and environmental legislation include provisions for total and partial restrictions on land use and development which can apply to hazard-prone areas. The **Environment Management Act** empowers the **Environment Protection Authority** to limit land use and development along protected riverbanks and lakeshores, as well as in wetlands and hilly or mountainous areas at risk of environmental degradation. The authority can declare protected zones along riverbanks and lakeshores “within such limits as it may be considered necessary to protect those rivers and lakes from deleterious

human activities”.<sup>222</sup> The **Environment Protection Authority** is responsible for issuing guidelines and prescribing measures for the sustainable use and management of wetlands, hillsides, hilltops and mountainous areas, including appropriate farming methods, carrying capacity related to animal husbandry, measures to curb soil erosion, disaster preparedness in areas prone to landslides, protection of hillsides, hilltops and mountainous areas, and protection of catchment areas.<sup>223</sup>

Moreover, the Environment Protection Authority can impose land use and development restrictions on an ad hoc basis through an environmental protection order or an environmental easement. The Environment Management Act states that an environmental protection order can be declared “against any person whose acts or omissions have or are likely to have adverse effects on the protection and management of the environment and the conservation and sustainable utilization of natural resources”. However, such orders are not necessarily based on the relevant area’s proneness to hazards. Environmental easements may also be issued to facilitate “conservation and enhancement of the environment [...] through the imposition of one or more obligations in respect of [the] use of land [...] being the land in the vicinity of the benefited environment”.<sup>224</sup> Unlike the 2017 **Environment Management Act**, the 1996 **Environment Management Act**, which is still in operation in Malawi, explicitly states that environmental conservation areas can be declared based on “the proneness of an area to any hazards against which the area requires protection”.<sup>225</sup>

The **Physical Planning Act** includes provisions

222 Environment Management Act (2017). Section 47 (3).

223 Ibid., Sections 48 (3) and 51.

224 Ibid., Section 74 (2).

225 Environment Management Act (1996). Section 32.2 (f).

for the control of development through development permissions, namely, outline development and development permissions, advertisement permissions and subdivision permissions.<sup>226</sup> When deciding on an application for a development permission, the Act states that the responsible authority should consider any district and/or local physical development plan applicable to the area, the foreseeable impact of the proposed development on the natural or built environment and on adjacent uses of land, as well as considerations of noise, air, water and ground pollution and any other detrimental effect the proposed development may have on the built environment of the area.<sup>227</sup> However, it does not explicitly mention considerations related to natural hazards, such as whether the applicable area is hazard-prone or particularly vulnerable to the effects of climate change.

The **Buildings Bill** of 2020 proposes restrictions on land use and development based on identified hazard prone areas, with Section 18 stating that the appropriate authority “shall, in classifying buildings and structures according to location and zoning requirements, have regard to hazardous or disaster-prone areas”.<sup>228</sup> The **National Buildings Policy** describes disaster risk and climate change impact in building infrastructure, and specifically indicates that “the choice of designs and methods of construction should consider the severity of...disasters in order to minimize and mitigate their negative impacts”. Such measures are intended to steer the population away from “practices of building in disaster-prone areas such as riverbanks and hills”.<sup>229</sup>

Several other national policies make various

226 Physical Planning Act (2016). Section 45.

227 Ibid., Section 50 (1).

228 Buildings Bill (2020). Section 18.3 (b).

229 National Buildings Policy (2018). Section 1.2.9.5.

references to hazard-prone areas and the Government’s commitment to the eventual development of legal measures dictating restrictions on land use within such areas. The **National Land Policy** affirms that “legal and other measures will be taken to prevent building on hazardous and environmentally sensitive areas”. It further states that these areas will be identified and clearly marked in all towns.<sup>230</sup> The **National Climate Change Management Policy** adds to this policy commitment, stating that improving “zoning and planning to reduce the vulnerability of people by ensuring that settlements and infrastructure are not built on sensitive and disaster-prone areas” will be a national priority, moving forward.<sup>231</sup>

As such, national policies better link land-use and development restrictions to the mitigation of climate hazards, while legal provisions related to such restrictions focus on environmental protection more broadly. However, neither law nor policy in Malawi includes measures for identifying and providing public maps of hazard-prone areas.

Regarding public land buffers, only the **National Land Policy** includes a provision for land buffers between bodies of water and land. Section 9.3 calls for “a public easement equal to 50 metres from all points along the shoreline and stretching inland from the highwater mark [which] shall be accessible to the public”. The policy specifies that “this restricted zone cannot be privatized by current or future landowners [with regard to] all lakes in Malawi”.<sup>232</sup> Though the **Environment Management Act** includes provisions for protecting riverbanks and shorelines, it does not stipulate specific provisions for establishing

230 Malawi National Land Policy (2002). Section 9.3.1 (e).

231 Malawi National Climate Change Management Policy (2016). Section 7.

232 Malawi National Land Policy (2002). Section 9.3.1 (c).

public land buffers along lakes and rivers. The only mention of public land buffers is made in relation to the conservation of biological resources; the **Environment Management Act** states that in tandem with the relevant lead agencies, the **Environment Protection Authority** can prescribe measures and issue guidance to promote the conservation of biological resources in situ in relation to “the selection and management of buffer zones near protected areas”.<sup>233</sup> Somewhat discordantly, a green belt initiative project was envisioned under the Malawi Growth and Development Strategy III to develop 7,500 hectares of land for irrigation along lakeshore areas and major rivers with a view to attaining food and nutrition security, and yet also potentially threatening the environmental protection of these shoreline and riparian areas.<sup>234</sup> The lack of explicit legal provisions requiring shoreline and riparian setbacks compounds this threat.

Variable, erratic rainfall in the highlands of Malawi often causes flooding in lower-lying areas, with the prevalence of deforestation increasing the flood risk of communities in these areas. The Safer House Construction Guidelines encourage the respect of voluntary riparian setbacks when selecting a construction site. The guidelines specifically state that “[w]hile choosing the site, the following element need to be taken into consideration: [...] Distance from rivers that are prone to flooding (the minimum distance is 50m from each riverbed)”.<sup>235</sup> Whether the width of these riparian setbacks is based on scientific assessments is not clear, though section II of the guidelines does state that the document is “built upon current construction practices,

taking into account local skills and materials... focusing on multi-hazard risk reduction following a participatory planning process”.<sup>236</sup> Despite the importance of basing environmental stewardship on scientific assessments, it is worth acknowledging that Malawi prioritizes the country’s land tenure diversity rather than unilaterally applying a Western view of climate change adaptation.

Lakeshore setbacks and integrated lakeshore management zones are not provided for in the country’s body of legislation as of 2022. However, the **National Land Policy** discusses the impact of lakeshore development with specific regard to Lake Malawi, the country’s primary source of freshwater. It calls for a lakeshore planning process that integrates stakeholders within traditional authorities and various levels of district and local governments to mitigate development impacts.<sup>237</sup> The **National Land Policy** explicitly states that a “special planning and enforcement committee will be empowered [...] to review all current and future development” within lakeshore environments.<sup>238</sup> It additionally establishes a “Lakeshore Integrated Development and Management Programme” to conserve both land and the aquatic environments.<sup>239</sup> Proactively and inclusively managing lakeshores as a matter of national land policy is a step in the right direction, but the policy does not further minimize climate disaster and hazard risk by integrating that administrative framework with climate change adaptation considerations.

There are no legal provisions currently in place in Malawi which mandate that developers plan the location of essential infrastructure outside of high-risk flood-prone areas. However, certain

233 Environment Management Act (2017). Section 69 (c).

234 Malawi Growth and Development Strategy III (2017). Annex 1.

235 Safer House Construction Guidelines (2010). Section 2.

236 Ibid.

237 Malawi National Land Policy (2002). Section 6.7.1.

238 Ibid., Section 6.7.1 (c).

239 Ibid., Section 9.10.1 (d).



pieces of legislation and policy require that developers plan with flood risk in mind where necessary. The proposed Section 18.3(c) of the **Buildings Bill** requires developers to classify “buildings and structures according to location and zoning requirements, hav[ing] regard to...[the] possibility of floods, strong winds, earthquakes, landslides etc”.<sup>240</sup> Further, the Safer House Construction Guidelines state that “wetlands and areas susceptible to flooding will be zoned to prevent or minimize the adverse environmental impact of cultivation and other developments”. It further clarifies that in this context, wetlands also refers to flood plains.<sup>241</sup> Though existing legislation demonstrates an awareness of climate adaptation needs relative to development in Malawi, essential infrastructure is not mentioned in or regulated by these provisions.

There are several laws and policies geared towards preserving the quality of water bodies and accordingly regulating water runoff from human settlements. For example, the **Environment Management Act** states that environmental conservation orders may be imposed on land to “preserve the quality and flow of water in a dam, lake, river or aquifer”, but it does not address the issue of the increasing volume of stormwater in rapidly expanding urban areas.<sup>242</sup> The **Malawi Growth and Development Strategy III** states that there is an initiative to channel and drain water from urban areas using “green infrastructure and zoning in the cities for aesthetic, recreational and climate-proofing benefits” to better plan and manage land uses.<sup>243</sup> This does not directly address

240 Buildings Bill (2020). Section 18.3 (c).

241 Safer House Construction Guidelines (2010). Sections 6.4.1 (d) and 9.9.1.

242 Environment Management Act (2017). Section 74 (4) (b).

243 Malawi Growth and Development Strategy III (2017). Annex 3.



Locals and fishermen by the lake shore, Malawi by Frédéric MARY source: Flickr

the issue of managing increasing stormwater volumes, although green infrastructure may refer to nature-based stormwater management systems which can improve ground infiltration of stormwater volumes. Standard sanitary systems specifically to manage stormwater runoff are not mentioned in the country's legal or policy framework. The potential of untreated stormwater runoff to spread disease presents a significant risk to public health, making this a problematic lapse in the urban environmental protection administration. Notably, the **Malawi Vision 2063** does not make any mention of drain water and its management.

Currently, no specific provisions of law in Malawi allow for or require land information systems to integrate climate vulnerabilities and the exposure of land parcels to climate change hazards. However, the **Environment Management Act** requires that the District Environmental Officer "gather and manage information on the environment and the utilization of natural resources in the district", though further description of the level of detail at which this information will be publicly reported at is not given.<sup>244</sup> Moreover, it is not required that this information be integrated into the land information system. The **National Urban Policy** commits the Government to establishing a "harmonized urban development information system", but does not require any specific structure or content vis-a-vis this system.<sup>245</sup> The **National Land Policy** establishes the Malawi Geo-Data Coordinating Committee and states that "a comprehensive and scientific inventory of geographic information will be compiled and stored to create a multiple access Land Information System"; however it does not specifically note that climate change

244 Environment Management Act (1996). Section 20.2 (e).

245 Malawi National Urban Policy (2019). Section 3.4.1 (c).

vulnerability information will be included.<sup>246</sup> Bolstering the volume of future available land metrics, the **Malawi Vision 2063** stipulates that the sustainability of the country's land management and investment approaches will be underpinned by a strong land tenure system. The Malawi Vision 2063 envisions reviewing and amending the land laws in order to establish ceilings to land holding and regulate its usage; enable fit-for-purpose land (re)distribution; and target productive but landless farmers and ensure inclusivity in transformative approaches to agriculture.

Additionally, some existing policies aimed at protecting vulnerable communities and their lands may support the country's commitment to integrating climate change hazard metrics into the country's land information system. In the **National Climate Change Management Policy**, "improv[ing] zoning and planning to reduce vulnerability of people by ensuring that settlements and infrastructure are not built on sensitive and disaster-prone areas (by supporting existing land resources and physical planning legislation)" is noted as a priority. The policy also seeks to facilitate the "integration of climate change into sectoral policies, programmes and planning systems at national and district levels through revising and updating sectoral legislations, policies and planning documents".<sup>247</sup> The **National Climate Change Management Policy** further expresses a strong national commitment to improving the breadth of climate change information available regarding land parcels, without necessarily guaranteeing that the land information system will integrate land parcels' risk of exposure to climate hazards.<sup>248</sup>

246 Malawi National Land Policy (2002). Section 6.16.1.

247 Malawi National Climate Change Management Policy (2016). Section 2.1.

248 Ibid.

The **National Buildings Policy** also discusses reducing disaster risk by integrating information systems; it specifically prioritizes strengthening “the building sector capacity to plan, design, monitor in compliance with relevant standards and regulations for disaster risk reduction and climate change mitigation”.

Specific legislation incorporating the vulnerabilities and exposure of land parcels to climate hazards into land information systems is critical to reducing the risk of climate disaster – this missing link is significantly problematic for the implementation of climate change adaptation as the country transitions to decentralized government administration. Similarly, planned evacuation routes and identified low-risk safety areas for use during extreme weather events are not mentioned in any legislation reviewed, possibly due to the lack of cohesion of land information within current data collection systems. However, under the **Environment Management Act** the **Environment Protection Authority** has the power to prepare guidelines or plans for coordination prevention, mitigation and management of environmental emergencies, including “natural and climate change-related disasters such as floods, cyclones, droughts and major pest infestations or the introduction and spread of invasive alien species.”<sup>249</sup>

### 3.4 ADAPTATION OF SLUMS AND OTHER VULNERABLE SETTLEMENTS

The issue of the uncontrolled growth of slums, informal urban settlements and other vulnerable settlements is mentioned in several pieces of Malawi legislation, policies and regulations with a view to supporting the adaptation of these areas.

249 Environment Management Act (2017). Section 64 (1) (d).

The **Customary Land Act**, the **Physical Planning Act** and the **Land Survey Act** include planning and land management tools for urban expansion, infill or the redevelopment of informal settlements. These planning and land management tools facilitate changes in the shape and configuration of plots of land. The **Customary Land Act** establishes that traditional land clerks will have the responsibility to “prepare land-use plans in accordance with the **Physical Planning Act**”, for controlling the development or redevelopment of areas designated as customary land.<sup>250</sup> The **Land Survey Act** similarly authorizes plot boundary changes, stating that “a surveyor or a person authorized in writing by the Surveyor General... [who] personally superintends such removal or disturbance and the erection of such other survey mark” to remove or disturb “any survey mark for the purpose of erecting another survey mark in its place”.<sup>251</sup> These provisions empower the responsible authorities to change the shape and configuration of plots, which can serve as a tool for the adaptation of informal, climate-vulnerable settlements. Additionally, the **National Urban Policy** includes a strategy for slum prevention, upgrading and urban renewal programmes, though it does not detail the methodology and approach to urban upgrading and renewal to be adopted.

The **Physical Planning Act** contains several provisions relevant to the upgrading of informal settlements which may be at risk of climate hazards and other climatic vulnerabilities. The local planning authority can prepare an urban layout plan for “part of an urban area in which [...] there is need for development or redevelopment or revisions or upgrading”.<sup>252</sup> This urban layout plan could be designed to use urban expansion,

250 Customary Land Act (2016). Section 8.3 (d).

251 Land Survey Act (2016). Section 52.2.

252 Physical Planning Act (2016). Section 33(1) (b).

infill, readjustment or redevelopment to upgrade a vulnerable informal settlement. The **Physical Planning Act** also provides for a tool called the “improvement area order” which can be used to adapt informal settlements. The improvement area order can be made in respect of “any area of land developed [...] in an unplanned and unauthorized manner or in a manner which makes further development or redevelopment of that land or adjacent land difficult to carry out or in a manner detrimental to the environment of the area and the health of the residents of the area or adjacent areas”.<sup>253</sup> The order can require the improvement of houses, the building or rebuilding of houses and other structures, the provision of roads, water and electricity in the area, the relocation of residents of the area, the demolition of houses and other structures, the reallocation of land within the area, the demarcation of boundaries, the landscaping of the area, and the payment of compensation to residents of the area who suffer loss or inconvenience through the exercise of any of the powers of the order.<sup>254</sup>

This informal upgrading process, through an improvement area order, includes measures for the inclusive participation of all owners and residents of the affected settlement. The **Physical Planning Act** states that “where the Minister wishes to make an improvement area order he may, prior to the making of such order, require the responsible authority over the area to which the proposed order relates to hold a meeting with the residents of that area in order to (a) explain to them the purpose of the proposed order; (b) obtain any representation on the proposed order; and (c) report the substance of the meeting to the minister.”<sup>255</sup> Moreover, the minister is required to

ensure that an improvement area order is “made known throughout the improvement area [...] for the purpose of bringing it to the attention of the residents in the area”.<sup>256</sup> During the period of implementation, the authority responsible for the implementation of the improvement area order is also required to “keep the residents of the area informed of, and consider their representations on, the programme of implementation” as well as to “consult with any existing committee or residents or may appoint a committee of residents to assist them generally in the implementation of the order”.<sup>257</sup>

Several national policies also include recommendations for the establishment of mechanisms to ensure the participation of all owners and residents in the context of slum upgrading and climate change adaptation. The **National Land Policy** states that upgrading plans will be prepared “by local authorities with the participation of residents and their local community organizations”.<sup>258</sup> However, this does not give special consideration to vulnerable groups such as women, young people, disabled and elderly people. The **National Climate Change Management Policy** and its Implementation, Monitoring and Evaluation Strategy makes the inclusion of “vulnerable and disadvantaged groups such as women, children, the elderly and the physically and mentally challenged in adaptation, mitigation, technology transfer and capacity building plans, projects and programmes” a policy priority. It further prioritizes “engagement with disadvantaged groups when designing and implementing adaptation, mitigation, technology transfer and capacity building plans, projects and programmes” and the “promotion of technologies that are

253 Ibid., Section 62 (1).

254 Ibid., Section 62 (2).

255 Ibid., Section 62 (3).

256 Ibid., Section 62 (5).

257 Ibid., Section 62 (7).

258 Malawi National Land Policy (2002). Section 6.11.2 (c).

amenable and culturally appropriate for use by vulnerable groups” as strategies for ensuring this outcome.<sup>259</sup>

Requirements to conduct community-led surveys, maps and household enumerations to facilitate the adaptation of slums and other vulnerable settlements are not present in the country’s legislation or policy. The **National Land Policy** mentions that the **Land Survey Act** “requires surveying to explore community-based approaches and adaptations of spatial information technologies in the practice and standards required for registration”, but not specifically in reference to the adaptation of slums and other vulnerable settlements.<sup>260</sup> Additionally, the **National Meteorological Policy**, under the policy priority of monitoring and predicting the weather and climate, states that a key portion of management of climate change in relation to this policy priority would be to “[e]nhance stakeholders consultations to promote the spirit of volunteerism in weather and climate observations and reporting”.<sup>261</sup> However, this is not discussed in relation to slums or other vulnerable settlements.

Provisions related to flexible planning and infrastructure standards for the adaptation of slums and other vulnerable settlements are largely absent from national law and policy in Malawi. However, the **National Land Policy** does state that special areas will be designated as “low-income housing with simplified building regulations” and that they will be “provided with services that residents need and can afford”.<sup>262</sup> There are also limited legal or policy

provisions ensuring the accessibility of water, sanitation and electricity services based on customary and non-documented forms of land tenure. The **Physical Planning Act** recognizes customary forms of land tenure, which are themselves recognized in the **Customary Land Act**.<sup>263</sup> Furthermore, the **Physical Planning Act** provides several exemptions to development permission requirements relating to customary land, which in practice can ensure their access to basic infrastructure and services. For example, “the erection of a building of a traditional nature within the recognized boundaries of a village” is exempted from the need to obtain a development permission.<sup>264</sup> The **Local Government Act** states that local councils may “establish, maintain and manage services for the collection, removal and treatment of solid and liquid waste, and the disposal thereof, whether within or without its area, and may compel the use of its [the local council’s] services by any body of persons to whom the services are available” and “compel and regulate the provision, construction, use, maintenance and repair of drains, latrines and receptacles for solid and liquid waste”.<sup>265</sup> The Malawi Growth and Development Strategy III aims to achieve “increased access to water resources” by “[p]romoting empowerment of local communities to properly develop and manage catchment areas” as part of the policy priority of extending accessibility of essential utilities to all.<sup>266</sup> The Malawi Vision 2063 also includes provisions which seek to ensure the accessibility of water and sanitation services regardless of land tenure type. In envisioning a healthier Malawi, the document states that “ensuring the provision of clean water, sanitation and hygienic

259 Malawi National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016). Section 2.6.3.

260 Ibid., Section 7.2.2 (a).

261 National Meteorological Policy (2019). Section 3.1.4 (d).

262 Malawi National Land Policy (2002). Section 6.11.2 (b).

263 Physical Planning Act (2016). Section 43 (1).

264 Ibid., Section 43 (2) (a).

265 Local Government Act (1998). Second Schedule (1).

266 Malawi Growth and Development Strategy III (2017). Section 6.2.



Flood victims rush to a rescue boat, Malawi, Photo by Arjan van de Merwe/UNDP, via Flickr

services will be critical at the household and community level”. Further, the Government is called upon to promote “the adoption of safe water and sanitation practices at the individual and household level”.<sup>267</sup>

The **Physical Planning Act** fails to include provisions requiring that affordability of area subject to an improvement area order be maintained. The **National Urban Policy** contains provisions promoting housing affordability in Malawi at large, though these provisions do not specifically stipulate requirements to maintain the affordability of the upgraded settlements for the benefit of the pre-existing community and prevent its economic displacement. The **National Urban Policy** references the **National Housing Policy** of 2000, which contain strategies for the provision of affordable housing so that housing is available at prices accessible to most households and especially for low-income groups.<sup>268</sup> The **National Housing Policy** sets the policy goal of increasing access to adequate, quality and affordable housing for all income groups, with particular attention to vulnerable households. Further it states that there shall be coordinated and responsive institutional and regulatory frameworks meeting quality and affordable housing needs for all.

None of the mentioned pieces of legislation or policy include provisions that require the assessment of the urban plans for the adaptation of slums, informal settlements and other vulnerable settlements’ ability to meet the local, sub-regional and national governments’ climate change strategies, adaptations targets and measures. It should also be noted that legal provisions and frameworks relating to urban planning seldom link climate change to the

267 Malawi Vision 2063 (2020).

268 Malawi National Urban Policy (2019). Section 3.4.

adaptation of slums, informal settlements and other vulnerable settlements.

### 3.5 PLANNED RELOCATIONS FROM AREAS AT RISK OF CLIMATE CHANGE

There are limited legal, regulatory or policy provisions in Malawi that support the relocation of populations from areas at risk of the effects of climate change to ensure their safety and health, after all reasonable on-site alternatives and solutions have first been explored. Specifically, no national legislation or policy includes legal requirements to identify and, if necessary, set aside land for relocation in case of extreme weather events. Nor does any legal or policy document include the requirement that the resettlement land needs to be safe from current and future climate hazards. The **Physical Planning Act** provides that “an improvement area order may make provision for the exercise of powers in respect of [...] the relocation of some or all of the residents of the area either within the area or somewhere else”. This provision could facilitate climate hazard-based relocations, since improvement area orders are meant to address an area of land where further development or development is “difficult to carry out” or where development has occurred “in a manner detrimental to the environment of the area and the health of the residents of the area or adjacent areas.”<sup>269</sup> The law, however, does not detail a legal requirement to provide the relocation site prior to occupation with livelihood opportunities, water and food security, sanitation, education, and health facilities.

### 3.6 SECURITY OF TENURE

Several policies, laws, acts, plans and guidelines in

Malawi include formal provisions and regulations to ensure the security of tenure of people living in slums and other settlements vulnerable to climate change threats. A crucial step for improving the tenure security of these residents is to first provide legal recognition of a variety of tenure forms, including customary rights, informal tenure rights and informal occupation. The **National Land Policy**, the **Malawi National Policy on Equalization of Opportunities for Persons with Disabilities** of 2006, the Malawi Vision 2063, the **Physical Planning Act** and the **Customary Land Act** all recognize a variety of tenure rights, albeit to varying degrees.

Customary law is recognized in the Constitution, where it states that “[e]xcept in so far as they are inconsistent with this Constitution, all Acts of Parliament, common law and customary law in force [...] shall continue to have the force of law, as if they had been made in accordance with and in pursuance of this Constitution”.<sup>270</sup> The Land Act defines customary land as “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”.<sup>271</sup> The **Land Act** classifies land as either public or private, whether the former is either government land or unallocated customary land, while private land takes the form of a freehold, leasehold or customary estate. The **Customary Land Act** was issued to “provide for the Ascertainment of Rights and Interests in Customary Land” and establishes the “Allocation Record” which serves as a land registry of customary land rights. The **Customary Land Act** acknowledges multiple forms of customary land tenure, stating that traditional management areas will be divided into “land which is occupied and used or available for occupation and use

269 Physical Planning Act (2016). Section 63 (1).

270 Constitution of Malawi. Section 200.

271 Malawi Land Act (2016). Section 2.



Local village in Malawi Photo by Peter Holst , via Flickr

on a communal or public basis, to be known as communal land”, “land which is occupied or used by an individual or family or a group of persons under customary law”, and “land which may be available for communal or individual occupation and use through allocation by a land committee in accordance with the provisions of this part”.<sup>272</sup> The **National Land Policy**<sup>273</sup> affirms the status of customary land tenure rights as enjoying “statutory recognition of customary land tenure as a right protected by the Constitution”.<sup>274</sup> The **National Land Policy** acknowledges the past practice of customary land being treated as public land and offers a new classification method that would return land administration to traditional authorities. This would effectively secure customary lands for the implicated community members.<sup>275</sup>

272 Customary Land Act (2016). Section 13.1(a), (b) and (c).

273 Malawi National Land Policy (2002). Section 4.6.1-2 and Section 4.11.1 (a).

274 Ibid., Section 4.6.1.

275 Malawi National Land Policy (2002). Section 4.6.2.

The **Physical Planning Act** also recognizes customary land rights and outlines development guidelines for unallocated customary land, as administered by the Minister of Lands, Housing and Urban Development.<sup>276</sup> Moreover, various provisions of the Physical Planning Act acknowledge the rights of both owners and “occupiers” of land and/or buildings. The **Environment Management Act** defines an “occupier” as “a person in occupation or control of any premises and, in relation to premises different parts of which are occupied by different persons, means the person in occupation or control of each such different part”.<sup>277</sup> This definition does not necessarily link occupation rights to a legal land registration status, which would implicitly recognizing the rights of (bona fide) informal occupiers. The **National Policy on Equalization of Opportunities for Persons with Disabilities** does not expressly define multiple tenure forms, but it does call for local authorities

276 Physical Planning Act (2016). Section 43 (1).

277 Environment Management Act (2017). Section 2.



to “provide men and women with disabilities with access to secure land tenure, housing and property rights”.<sup>278</sup> The **National Land Policy** also upholds principles for the recognition of a variety of tenure rights:

“This policy will ensure that security of tenure can be guaranteed on an equitable basis to all citizens in accordance with the following principles: (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.”<sup>279</sup>

Although several laws, policies, acts, plans and guidelines in Malawi recognize the need to regularize informal land and property rights, only the **Customary Land Act**<sup>280</sup> and the **Physical Planning Act** make provisions for informal regularization. The former outlines provisions on multi-jurisdictional agreements to be made regarding the formalization of the management of traditional areas through formal declarations of customary land. The **Physical Planning Act** empowers the competent authority to regularize authorized developments on a case-by-case basis, “by written notice served on the owner and occupier of the land or building in respect of which the unauthorized development has taken place, [to] require that person or those persons to apply for a grant of development permission”.<sup>281</sup> The Act further enables the responsible authority to directly issue a grant of development permission upon application

when the unauthorized development is of a minor nature.<sup>282</sup>

While there is no language referring to regularizing informal land and property rights, the **National Land Policy** describes the formalization of traditional management areas, citing the “customary tenure system as the basis of traditional authority” and laying out guidelines for “a return of land administration to traditional authorities” with respect to customary rights to tenure. The policy defines customary estates in terms of property rights to promote tenure security in relation to these estates. It includes further provisions regarding formalizing customary estates and protecting the interests of traditional authorities with respect to customary land; however, informal land and property rights outside of customary rights are not mentioned.<sup>283</sup>

The **National Urban Policy** also recognizes the need to regularize informal land and property rights<sup>284</sup> but does not prescribe any processes for doing so. The **National Policy** on Equalization of Opportunities for Persons with Disabilities promotes access to land and property ownership for people with disabilities and charges the Ministry of Lands, Housing and Survey with the responsibility for achieving this,<sup>285</sup> but the policy does not describe the means by which this will be achieved.

Regarding provisions that allow a variety of tenure forms, including customary rights, informal tenure rights and occupation, to be recorded in the official land information system, a 2017 amendment of the **Registered Land Act** of 2016 states that the registrar of the traditional authority of the relevant jurisdiction is able to

278 National Policy on Equalization, Section 4.11.1.2.

279 Malawi National Land Policy (2002). Section 4.11.1 (a).

280 Customary Land Act (2016). Sections 11 and 12.

281 Physical Planning Act (2016). Section 60 (1).

282 Ibid., Section 60 (5).

283 Malawi National Land Policy (2016). Section 4.6-7.

284 Malawi National Urban Policy (2019). Section 1.2.

285 National Policy on Equalization, Section 5.2.1.8.

register customary land at their discretion with the “written consent of the land committee responsible for the area”.<sup>286</sup> The **National Land Policy** requires traditional authorities to “register all land transactions occurring within their jurisdiction, maintaining a Traditional Land Records Storage and Management system”.<sup>287</sup> The policy creates the “National Land Information Management System” which “should be developed to relate all land information to the same geodetic and cadastral reference codes to sanction and protect public and private property”.<sup>288</sup> Given the context, “all land information” can be interpreted as applying to customary land, however it is not clear if it could also include informal tenure rights since the policy does not specifically mention informal occupancy rights that may apply to people living in informal settlements on the urban periphery.

In circumstances necessitating the eviction or relocation of occupants, tenants or owners, the **National Land Policy** includes provisions on how these processes should be conducted. It discusses a strategy to “encourage the resettlement of landless and land-short households in carefully selected area throughout the country”<sup>289</sup> and financing for relocation.<sup>290</sup> It also upholds a general prohibition on forced evictions, stating that “[the] Government cannot force people to relocate to any particular location without their consent”.<sup>291</sup> However, compulsory evictions may be justified under the **Land Acquisition Act** of 2013 when government acquisition of private property is necessary to achieve a purpose that is in the public interest.

Provisions requiring compensation for the forfeiture of formal land rights are incorporated in the **Land Act**, the **Physical Planning Act**, the **Customary Land Act** and the **Land Acquisition Act**. The **Physical Planning Act** specifically guarantees the right to the payment of compensation in the following cases: (i) in which land which was the subject of a development permit application cannot be of beneficial use due to the minister’s refusal to grant development permission; (ii) in which a building was destroyed due to a natural disaster and the competent authority refuses to allow a building of a similar structure to be erected on the same or adjacent site; (iii) in which the competent authority requires a building to be demolished, altered, removed, relocated or to cease being built or cease enjoying a certain land use; (iv) in which a person is required to move from his or her home on either on a permanent or temporary basis due to an improvement area order; (v) in which a person has suffered a diminution in the value of his or her land due to the reallocation of land for a subdivision; (vi) in which a development permission has been revoked when the holder of the permission has incurred expense in complying with the development permission.<sup>292</sup>

The obligation to compensate residents affected by an improvement area order, who suffer loss or inconvenience such as temporary or permanent relocation, implicitly recognizes the right of informal tenure holders to receive compensation since improvement area orders may be issued in areas of land developed “in an unplanned and unauthorized manner”.<sup>293</sup> The **National Urban Policy** acknowledges that residents of informal settlements have a right to residency; however, this policy and other national policies lack legal provisions to uphold the rights of slum dwellers

286 Registered Land Act of 2016 (amended 2017). Section 12(3).

287 Malawi National Land Policy (2002). 5.14.1 (b).

288 Ibid., Section 6.16.1 (b).

289 Malawi National Land Policy (2002). Section 5.19.

290 Ibid., Section 5.20-21.

291 Malawi National Land Policy (2002). Section 5.22.

292 Physical Planning Act (2016). Section 68.

293 Ibid., Section 63 (1) and (2) (h).

to compensation in cases of eviction and the loss of personal property. Moreover, there are no legal provisions in force in Malawi which require compensation for the loss of livelihoods for slum dwellers or for the benefit of host communities which receive resettled people on a large scale.

Due to the limited recognition given to informal tenure rights, disputes arising from inadequate compensation currently plague the judicial system. Additionally, there are limited formal appeal processes and dispute-resolution mechanisms to redress grievances and resolve land and property disputes related to the adaptation of slums and the relocation of vulnerable groups. The **Physical Planning Act** allows for an appeal when someone has been aggrieved by a decision directly applicable to him or her that is related to the implementation of improvement area orders.<sup>294</sup> This may enable those adversely affected by the adaptation of slums, vulnerable settlements and planned relocations to benefit from the redress of grievances. The **Customary Land Act** enables “any person named in or affected by the Allocation Record or Demarcation Map who considers such Record or Map to be inaccurate or incomplete in any respect may [...] inform the Allocation Officer stating the grounds of his objection”.<sup>295</sup> It also establishes the “Traditional Land Management Area, a customary land tribunal to adjudicate on any disputes concerning customary land in the area”.<sup>296</sup> Furthermore, the **National Land Policy** outlines a detailed dispute settlement processes for the resolution of land disputes involving a Village Land Tribunal, Group Village Tribunal, Traditional Authority Land Tribunal, District Tribunal of Traditional Authorities, and/

or Central Land Settlement Board.<sup>297</sup>

Apart from the traditional authorities and tribunals specified in the **Customary Land Act** and **National Land Policy**, there are no legal provisions which include alternative dispute-resolution mechanisms for land and property disputes such as negotiation, mediation and arbitration.

### 3.7 DEVELOPMENT APPROVAL AND ADAPTATION

Ensuring the implementation, monitoring and enforcement of regulations regarding adaptation to climate risk and vulnerability in physical development is critical to future sustainable planning and design. The development approval process should be linked to approved urban plans, zoning regulations and collected evidence from climate risk and vulnerability assessments. Malawi has several pieces of legislation that establish this legal linkage, namely, the **Physical Planning Act**, the **National Urban Policy** and the **National Building Policy**.<sup>298</sup>

The **Physical Planning Act** states that “all plans, programmes and projects of development proposed for the district [...] and all plans for areas bordering on or adjacent to the district shall, as far as is practicable, be [...] prepared as to have regard to [...] the district physical development plan”.<sup>299</sup> It further states that all local physical development plans must be prepared with regard to the district physical development plan.<sup>300</sup> Moreover, when considering any application for development permission, the responsible authority is obliged to take into account “any district physical development plan or local

294 Ibid., Section 71.

295 Customary Land Act (2016), Section 24 (1).

296 Customary Land Act (2016) Section 44.

297 National Land Policy (2002), Section 8.12.

298 National Buildings Policy (2018); Malawi National Urban Policy (2019); Physical Planning Act (2016).

299 Physical Planning Act (2016), Section 32 (1).

300 Ibid., Section 32 (2).

physical development plan applicable to the area” as well as “the foreseeable impact of the proposed development on the natural or built environment and on adjacent uses of land”. The competent authority should also take into consideration the “noise, air, water and ground pollution and any other detrimental effect the proposed development may have on the amenity and built environment of the area and adjoining land uses”.<sup>301</sup>

The **National Environment Action Plan** is said to “be binding upon all persons in the public and private sector, including private companies, non-governmental organizations and government departments and agencies” in the **Environment Management Act**.<sup>302</sup> The Act also empowers the Environment Protection Authority to “monitor activities, plans and programmes of lead agencies to ensure that they conform to the strategies, plans and programmes under the **National Environment Action Plan** and the **District Environment Action Plan** and respond to the National State of the Environment and Outlook Report and district state of the environment reports as the case may be.”<sup>303</sup> At the district level, the **Environment Management Act** states that “a person shall not implement development activities or project in any district without consulting the District Environmental Sub-Committee”.<sup>304</sup> Furthermore, certain development activities may require a permit or licence based on the results of an environmental and social impact assessment as prescribed in the Environment Management Act.<sup>305</sup> The **National Building Policy** further supports “carrying out environmental and social impact assessments in building projects” in addition

to “strengthening the building sector capacity to plan, design, monitor in compliance with relevant standards and regulations for disaster risk reduction and climate change mitigation”.<sup>306</sup>

While these explicit legal provisions do ensure a linkage between development approval, urban plans, zoning regulations and environmental vulnerability, the scarcity of provisions explicitly related to climate risks, vulnerabilities and hazard-prone areas limits the extent to which development controls support climate change adaptation. As such, climate risk and vulnerability assessments are not considered in the standard development approval processes.

The **Physical Planning Act** includes provisions allowing the competent governmental authority to charge developers for the infrastructure costs associated with the proposed development through conditions attached to the approval of development permission applications. The Act states that an authority responsible for granting a development permission may impose conditions such as “the contribution, including financial contribution, which a developer will be required to make to the provision of infrastructure and car-parking in connection with the development.”<sup>307</sup> More broadly, the **Malawi Vision 2063** seeks to ensure that the majority of the financial burden of public services does not fall on individual citizens through a new development agenda redistributing a larger share of the costs to developers.<sup>308</sup>

With respect to monitoring compliance with the approved development and its conditions, the **Environment Management Act** authorizes the Environment Protection Authority to carry out periodic environmental audits of any project

301 Ibid., Section 50 (1).

302 Environment Management Act (2017). Section 28(3) (d).

303 Environment Management Act (2017). Section 28 (4).

304 Ibid., Section 29 (3).

305 Ibid., Section 31.

306 National Building Policy (2018). Section 3.15.1 (a, g).

307 Physical Planning Act (2016). Section 50.3 (b).

308 Malawi’s Vision 2063 (2020).

for the purposes of enforcing the conditions of granting a development permission. However, there are limited provisions regarding the monitoring of development to ensure its compliance with conditions related to climate change adaptation. The modernization of data collection, analysis and distribution will be necessary to strengthen the extant monitoring framework. The **National Climate Change Management Policy** and its Implementation, Monitoring and Evaluation Strategy states that promoting the “application of research and technology advancement for climate change adaptation and mitigation based on relevant needs assessment and state of science and technology reports” will be a major task of the country’s administration moving forward.<sup>309</sup>

The **Physical Planning Act** contains extensive provisions on the enforcement process for developments not compliant with conditions attached to the approval of their submitted application, including but not limited to: enforcement notices, events necessitating structure dismantling, and events requiring land restoration.<sup>310</sup> The **Environment Management Act** outlines how offences of environmental regulations under the Act are managed, stating that “any person who contravenes any provision of this Act for which no other penalty is specifically provided shall be guilty of an offence and liable, upon conviction, to a fine of not less than 10,000 kwacha (MK) and not more than MK500,000, and to imprisonment for five years”.<sup>311</sup> The Act also details specific fines for offences of various types of environmental regulation.<sup>312</sup> The **National Urban Policy** lists several strategies

309 Malawi National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016). Section 2.4.2 (1).

310 Physical Planning Act (2016). Part V - Division II.

311 Environment Management Act (1996). Part IX, Section 61.

312 Ibid.



Flood victims, Makalanga, Malawi. Photo by Arjan van de Merwe/UNDP, via Flickr

for ensuring “integrated planning to promote optimum use of land for sustainable urban development” via enforcement of conditions for development, prior approval and the granting of development permissions.<sup>313</sup> Similarly, the **National Land Policy** “considers all development in a planning area without planning permission to be illegal and unauthorized”; it further adds that “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”.<sup>314</sup>

## RECOMMENDATIONS

### Climate risks and vulnerability for planned areas and infrastructure:

- To improve the Government’s ability to proactively address risks and vulnerabilities associated with climate change, it will be necessary to formally include climate vulnerability and risk assessments at several levels of governance which inform risk management and climate change risk management and adaptation decisions.
- Requiring vulnerability assessments and projections as part of district and local physical development plans will empower different levels of sub-national government to make climate-smart planning decisions.<sup>315</sup>
- The **Physical Planning Act** should include provisions requiring climate hazard mapping. These climate hazard maps should be integrated into district and/or local environment action plans stipulated under the **Environment Management Act**

and reviewed every 10 years at minimum.

- Finally, while environmental impact reporting is mandated in the **Environment Management Act**, the Act does not specify requirements for assessing the vulnerability of infrastructure to climate change.<sup>316</sup> Such assessments should be required by law.

### Implementation of identified adaptation options:

- Increasing sanitation facilities and initiating proper drainage for stormwater with stormwater-specific filtration system designs are critical to the country’s infrastructure in terms of avoiding a public health crisis due to the disease-carrying potential of untreated stormwater runoff. City drainage systems with filters for sediments and other contaminants are recommended so that these do not leak into potable water systems and other large bodies of water. It is recommended to use an inclusive and participatory process to develop a stormwater quality assurance plan and adopt a sustainable stormwater filtering system.
- Provisions requiring the planning of essential infrastructure out of hazard prone areas should be incorporated into national planning (e.g., **Physical Planning Act**) and/or environmental (e.g., Environmental Management Act) legislation, or future climate legislation.
- Identifying evacuation routes and low-lying safety areas relative to the disaster risks that climate change poses, such as cycles of severe droughts and floods, is recommended. The Government must

313 Malawi National Urban Policy (2019). Section 3.3.1.

314 Malawi National Land Policy (2002). Section 6.3.2.

315 Malawi National Urban Policy (2019).

316 Environment Management Act (1996).

prioritize developing these as publicly accessible and widely distributed resources, generated with input from both modern and traditional sources of knowledge about the climate hazards in high-risk areas.

### **Adaptation of slums and vulnerable settlements:**

- Legal provisions which enable the adaptation and upgrading of vulnerable settlements lack information that details how these processes will take place and reconfigure affected settlements. It is recommended that this be specified. Some of the actors that can take this role are: Local authorities, local communities, and the national Government.
- Clear legal mechanisms and frameworks ensuring the participation of all owners and residents of slums and other vulnerable settlements in the process of upgrading, especially with special consideration to women, young people, disabled and elderly people, are necessary for the equity and effectiveness of that process of upgrading.

### **Planned relocations from areas at risk of climate change:**

- The Government should introduce legislation that includes the legal requirements to identify and set aside land for relocation in the event of extreme weather disasters.
- The Government should enact a requirement that the land in question that is set aside for resettlement is safe from current and future climate hazards. A process for planned relocations that features engagement with the affected resettled and host communities should be developed.

- The legal requirement to provide relocation sites with essential services is also necessary and recommended.

### **Security of tenure:**

- To facilitate the recognition and legalization of a variety of tenure forms, the inclusive record-keeping of a variety of tenure rights in land registries should be enabled at the local and national levels.
- To shape policy effectively, an understanding of the types, scale and locations of informal tenure ought to be analysed and mapped.
- The Government should further consider what is meant by the “resettlement of landless and land-short households” in the **National Land Policy**. If landless refers not only to agricultural workers but also to slum dwellers, the national Government should prioritize legalizing a variety of tenure forms and improving the quality of life in informal settlements over removal and resettlement.
- To complement the **Customary Land Act**, a secondary piece of legislation may be needed to address tenure security and the process of a formal grievance, review, dispute resolution and redress mechanism for land and property disputes, with an emphasis on the procedures regarding the adaptation of slums, vulnerable settlements and planned relocations.

### **Development approval and adaptation:**

- The development approval process needs to be linked to climate risk and vulnerability assessments as well as to climate hazard mapping to ensure that the future development of cities is resilient to the effects of climate change.

- The **Physical Planning Act** should integrate environmental conditions of development permissions as stipulated in the Environment Management Act into the development permission approval process to harmonize zoning and environmental development conditions.

**See table 4 for a summary of the main laws, regulations, and policies referred to in this chapter.**



**TABLE 4. Referenced legislation (Planning for adaptation)**

<b>Legislation</b>	<b>Year</b>
Malawi Constitution of 1994 (including amendments in 2017)	1994
Malawi National Urban Policy	2002
Malawi National Land Policy	2002
Malawi National Land Policy	2019
Government of Malawi National Climate Change Policy	2016
Climate Change Implementation, Monitoring and Evaluation Strategy	2016
Environment Management Act	2017
Malawi Growth and Development Strategy III - Building a Productive, Competitive and Resilient Nation	2017
Environmental Management (Climate Change Fund) Regulations	2018
Safer House Construction Guidelines	2010
National Meteorological Policy	2019
Buildings Bill	2020
National Buildings Policy	2018
Malawi Vision 2063	2020
Physical Planning Act	2016
Customary Land Act	2016
Land Survey Act	2016

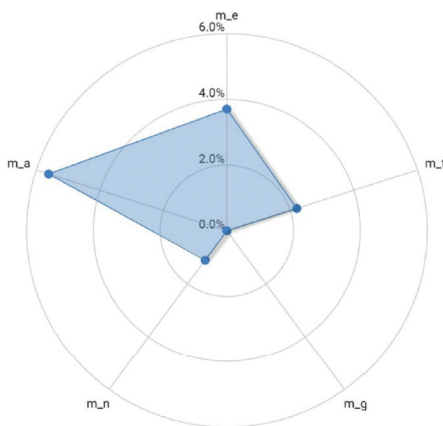


Fetching water at a local well, Malawi. Photo by Villages in Partnership source: Flickr

# CHAPTER 4.

## PLANNING FOR MITIGATION

### EXECUTIVE SUMMARY



#### Planning for Mitigation

m_c	Urban Plans and GHG Emissions
m_t	Urban Form and Reduction of GHG emissions
m_n	Neighbourhood Design and Energy Savings in Buildings
m_g	Green Spaces for Environmental and Climate Services
m_a	Development Approval Mitigation

Figure 6: Rating matrix for Malawi on planning for Mitigation

Along with enabling populations to adapt to the risks created by climate change, urban law can play an important role in helping cities reduce greenhouse gas emissions by defining urban forms; determining where land, infrastructure and basic services can be built; promoting the development and maintenance of urban green spaces; incentivizing energy saving in buildings and neighbourhood design; and laying out rules for planning and decision-making. Climate change mitigation considerations should be integrated into urban planning processes by ensuring that urban plans consider mitigation strategies and emphasize assessing greenhouse gas emissions associated with the implementation

of final approved plans.

The assessment of greenhouse gas emissions in the preparation of urban plans has largely not been mainstreamed into spatial planning law in Malawi. Instead, provisions requiring the assessment of greenhouse gas emissions are found in the **National Climate Change Management Policy** and the **Environment Management Act**. The National Climate Change Management Policy seeks to “promote the reduction of greenhouse gas emissions; and enhance carbon sinks through re-afforestation and sustainable utilization of forest resources”,<sup>317</sup> though these objectives are not linked to urban planning. The **National Urban Policy** seeks to link greenhouse gas emissions reduction to the urban sector by referencing the requirement to assess emissions as prescribed in the **National Climate Change Management Policy**.<sup>318</sup> However, the **National Urban Policy** does not contain specific provisions requiring the assessment of current and planned greenhouse gas emissions and carbon sinks; nor does it call for the production of different planning scenarios to compare potential greenhouse gas emissions and carbon sinks. The **Environment Management Act** mandates the Environment Protection Authority with developing guidelines “to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution”<sup>319</sup> and makes the Environment Protection Authority responsible for developing

317 Malawi National Climate Change Management Policy (2016). Climate change mitigation, p. 10.

318 National Urban Policy (2019). Section 1.3.1.

319 Environment Management Act (2017). Section 36 (d).

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*Malawi should consider implementing a policy requiring green spaces throughout metropolitan areas, both for aesthetic and recreational as well as climate change mitigation-related purposes.*

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guidelines that prescribe measures for the reduction of greenhouse gas emissions from any sector and the enhancement of carbon sinks. These guidelines and measures issued by the Environment Protection Authority can guide spatial planning processes in Malawi, resulting in the assessment and comparison of different urban planning scenarios with respect to greenhouse gas emissions and carbon sinks.

Urban planning law and regulations do not contain explicit provisions to promote a connected, accessible and dense urban form that reduces car trips, emphasizes walkability and encourages the efficient use of public infrastructure. There are no legal requirements that promote the connectivity in urban areas through minimum standards for streets, plot design rules or for a walkable streetscape. The legal framework does not contain provisions promoting mixed land use to increase accessibility to jobs, housing, services and shopping. However, the **National Land Policy** does make plot size a top priority for addressing urbanization trends, specifically urban sprawl.<sup>320</sup> And despite the lack of legislation promoting mixed land use, the **Physical Planning Act**, the **National Urban Policy** and the **National**

**Land Policy** include provisions that promote optimal urban density. Nonetheless, the legislation reviewed does not make any mention of determined allowed population densities and thus does not include any legal provisions that require the consideration of existing and planned transport infrastructure relative to determined allowed population densities.

The promotion of green spaces is an essential element of climate change mitigation in the urban context as the carbon absorption capacity of vegetation can significantly reduce the carbon footprint of urban communities. However, few legal provisions exist in Malawi to establish an adequately distributed network of urban green spaces. The **Environment Management Act** does not require that a proportion of urban land be reserved for parks and other green spaces, but it does allow for an environmental conservation order to be imposed on land to preserve fauna and flora and preserve scenic views or open space.<sup>321</sup> The **National Urban Policy** seeks to “promote the creation of public amenities including open spaces and parks”.<sup>322</sup> Meanwhile, the **National Climate Change**

320 Malawi National Land Policy (2002). Section 4.18.2.

321 Environment Management Act (2017). Section 74(4).

322 National Urban Policy (2019). Section 3.3.1.

**Management Policy** encourages the promotion of vegetation and tree cover.<sup>323</sup> The **Malawi Vision 2063** provides that green city spaces, that is parks, sports fields and vegetation, shall be a key element of integrated urban planning, providing spaces for physical activity, relaxation, peace and stress reduction, thereby boosting the mental and physical health of the urban population. However, there are no provisions in law or policy requiring the joint planning of networks of green areas and water bodies, such as Lake Malawi.

There are also limited legal and policy provisions in Malawi which require or incentivize neighbourhood design that achieves energy savings in buildings. While legal and policy provisions commit to energy saving at large, provisions regarding the design of energy saving in buildings at the neighbourhood and local level are lacking. The **National Climate Change Management Policy** promotes the adoption of a “climate compatible development approach when planning for energy infrastructure needs and to aim for low carbon solutions, including reducing overdependence on biomass-based energy”.<sup>324</sup> However to date, there are no regulations linking street design, plot layout or building positioning to sun orientation. In terms of wind direction, the Safer House Construction Guidelines provide specifications for housing construction and site selection based on wind considerations. Requirements relating to the thermal properties of urban surfaces are another way to improve neighbourhood design for energy efficiency. However, there are no provisions that require consideration of the thermal properties of urban surfaces in Malawi.

Regulations or provisions in law should exist

323 Malawi National Climate Change Management Policy (2016).

324 Ibid., Climate change adaptation.

to ensure that planning and design standards that mitigate the emission of greenhouse gases are enforced through the development approval process. However, there are limited provisions which link development approval to planning and design standards which mitigate emissions in Malawi. The **Environment Management Act** empowers the Environment Protection Authority to commission national studies on activities, practices or substances that cause climate change and to develop necessary policy and legislation for effective control, management and monitoring of such activities, practices and or substances.<sup>325</sup> Legal and policy provisions to allow local governments to charge developers for infrastructure costs associated with their developments exist in the Guidebook on the Local Government System in Malawi, the **National Housing Policy** and the **Physical Planning Act**. Regarding provisions which require monitoring compliance with the approved development and its conditions, the **Environment Management Act** specifies that inspectors have the right to monitor “the effects on the environment of any activities carried out on that land or premises and to enforce compliance with the environmental mitigation and management plans”.<sup>326</sup> Likewise, the **National Planning Commission Act** mandates the National Planning Commission to develop long- and medium-term development plans and to supervise the implementation of such plans.

## 4.1 URBAN PLANS AND GREENHOUSE GAS EMISSIONS

The assessment of greenhouse gas emissions in the preparation of urban plans has largely not

325 Malawi National Climate Change Management Policy (2016). Section 54 (3).

326 Malawi Environment Management Act (2017). Section 33 (3).

been mainstreamed into spatial planning law or policy in Malawi. Instead, provisions requiring the assessment of greenhouse gas emissions are found in the **National Climate Change Management Policy** and the **Environment Management Act**.

The **National Climate Change Management Policy** seeks to “promote the reduction of greenhouse gas emissions, and enhance carbon sinks through re-forestation and sustainable utilization of forest resources”.<sup>327</sup> The Implementation, Monitoring and Evaluation Strategy to the **National Climate Change Management Policy** establishes the objective of “promot[ing] good land-use practices including climate-smart agriculture and conservation agriculture”. The outputs associated with this objective include improved land use, increased carbon sink sources, greenhouse gas emissions mitigated through clean development mechanisms, Reducing Emissions from Deforestation and Degradation (REDD+) and greenhouse gas emissions reduced. While these are not explicitly linked to urban planning, the Implementation, Monitoring and Evaluation Strategy also sets the target that programmes and projects of all types include climate change aspects and issues. As such, the strategy and policy both serve as an entry point and benchmark for urban planning to promote improved land use, increase carbon sink sources and reduce greenhouse gas emissions.

An objective identified in the Implementation, Monitoring and Evaluation Strategy is to promote the adoption of and access to renewable and cleaner energy technologies, with specific strategies given for the energy, industrial, transport and housing and infrastructure

327 Malawi National Climate Change Management Policy (2016). Climate change mitigation, p. 10.

development sectors. Again, though urban and territorial planning is not explicitly mentioned, planning can be a tool to support these strategic sectoral objectives through urban form and land-use planning. The Implementation, Monitoring and Evaluation Strategy also requires the waste management,<sup>328</sup> agriculture<sup>329</sup> and transport<sup>330</sup> sectors to collect emissions data with the goal of using such data to benchmark emissions reduction. Responsible parties indicated include the following:

- Environmental Affairs Department
- Private sector
- Development partners
- Ministry of Local Government
- Ministry of Health
- Ministry of Lands, Housing and Urban Development
- Local assemblies
- Department of Climate Change and Meteorological Services
- Department of Forestry
- Forestry Research Institute of Malawi
- Ministry of Trade and Industry
- Department of Energy
- Educational institutions academia
- Ministry of Education, Science and Technology

328 Malawi National Climate Change Management Policy (2016); Implementation, Monitoring and Evaluation Strategy (2016). Section 2.2.4.

329 Implementation, Monitoring and Evaluation Strategy (2016). Section 2.2.1.

330 Ibid., Section 2.2.5.

The **National Urban Policy** links greenhouse gas emissions reduction to the urban sector by referencing the requirement to assess emissions as prescribed in the **National Climate Change Management Policy**.<sup>331</sup> However, the **National Urban Policy** does not contain specific provisions requiring the assessment of current and planned greenhouse gas emissions and carbon sinks; nor does it call for the production of different planning scenarios to compare potential greenhouse gas emissions and carbon sinks.

The **Environment Management Act** mandates the Environment Protection Authority with developing guidelines “to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution”.<sup>332</sup> Moreover, the Act makes the Environment Protection Authority, in consultation with lead agencies, responsible for developing guidelines that “(a) identify activities, practices and substances that cause climate change and measures for reducing or eliminating its effects; (b) prescribe measures for [the] reduction of greenhouse gas emissions from any sector; (c) prescribe measures to enhance greenhouse gas [carbon] sinks; (d) promote [the] assessment and monitoring of the potential impact of climate change on the function of ecosystems, vegetation sinks and net carbon sinks”.<sup>333</sup> These guidelines and measures issued by the **Environment Protection Authority** can guide spatial planning processes in Malawi, resulting in the assessment and comparison of different urban planning scenarios with respect to greenhouse gas emissions and carbon sinks.

## 4.2 URBAN FORM AND REDUCTION OF GREENHOUSE GAS EMISSIONS FROM TRANSPORT AND INFRASTRUCTURE

The statutory laws and policies in Malawi reviewed do not include legal requirements that promote the connectivity in urban areas through minimum standards for streets, plot design rules or for a walkable streetscape. The legal framework also does not contain provisions promoting mixed land use to increase accessibility to jobs, housing, services and shopping.

However, the **National Land Policy** makes plot size a top priority for addressing urban sprawl.<sup>334</sup> And despite the lack of legislation promoting mixed land use, both the **National Urban Policy** and the **National Land Policy** include provisions that promote optimal urban density. The former states that promoting “high density, compact neighbourhoods to curtail urban sprawl” is a priority for the Government to ensure that all authorities “embrace integrated planning to promote optimum use of land for sustainable urban development”.<sup>335</sup> The **National Land Policy** states that “the principle form of building in Malawi, especially residential buildings, is the simple single-storied structure”, meaning “each dwelling unit requires a separate plot of land, which contributes to urban sprawl”.<sup>336</sup> To combat this, the **National Land Policy** states that the Government “will revise all space and planning standards to promote a more compact form of building in all urban areas [...] zone more areas of towns for vertical development [...] and [...] within the Central Business Districts and in the immediate surroundings, the vertical extension

331 National Urban Policy (2019). Section 1.3.1.

332 Environment Management Act (2017). Section 36 (d).

333 Environment Management Act (2017). Section 54 (2).

334 Malawi National Land Policy (2002). Section 6.12.1.

335 Malawi National Urban Policy (2019). Section 3.3.1 (iv).

336 Malawi National Land Policy (2002). Section 6.12.1.

# Monthly Climatology of Mean-Temperature and Precipitation in Malawi from 1991-2020

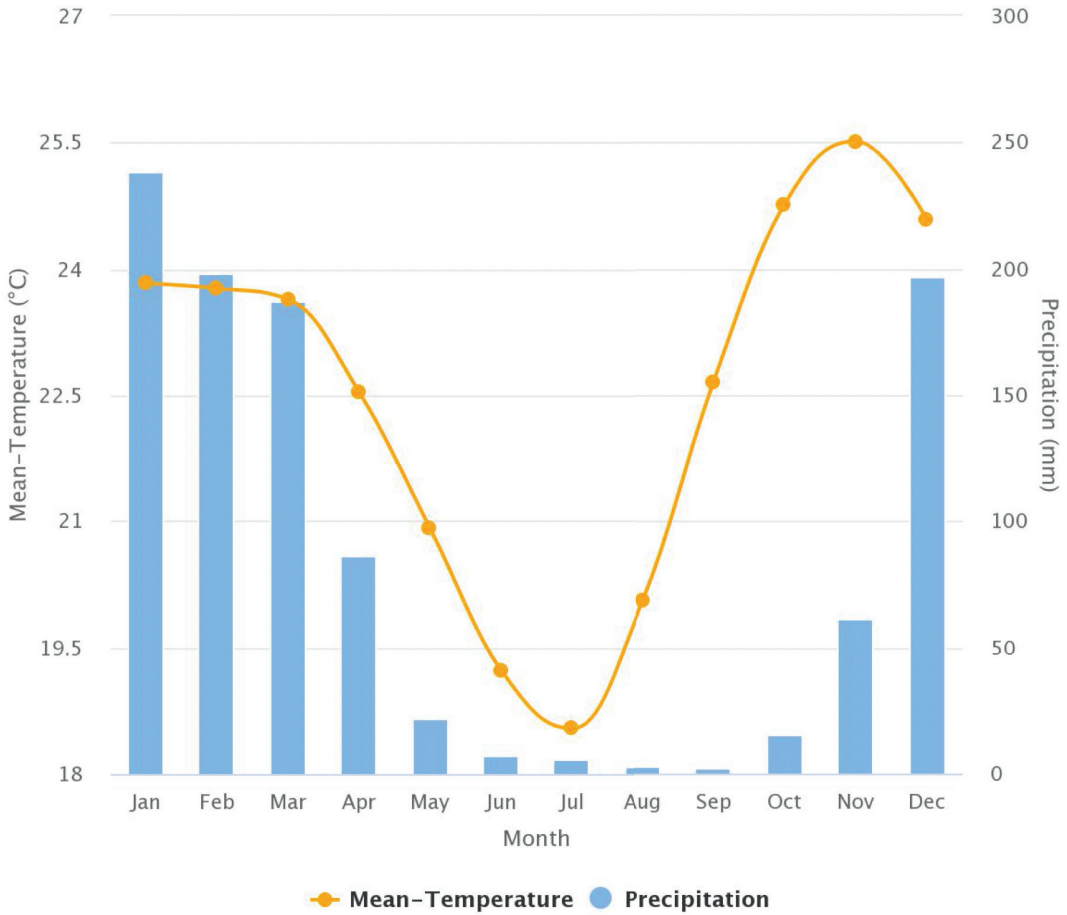


Figure 7: Monthly Climatology of Mean-Temperature and Precipitation in Malawi from 1991-2020 Source: Climate Change in Malawi, World Bank, 2022

will constitute the principle building form”.<sup>337</sup>

The **Physical Planning Act** also includes a provision promoting optimal urban densities. It states that improvement area orders may be made “in respect of any area of land developed primarily for residential purposes to a high density or in an unplanned and unauthorized manner”, or land developed in a way that makes further development or redevelopment difficult,

337 Malawi National Land Policy (2002). Section 6.12.1.

or “detrimental to the environment of the area and the health of the residents of the area or adjacent areas”.<sup>338</sup> The **National Building Policy** indicates that a lack of institutional clarity in the context of rapid urbanization has contributed to haphazard urban sprawl and expansion rather than increased urban density. It specifically states that “[a]lthough legislation exists to address social, economic and environmental impacts,

338 Physical Planning Act (2016). Section 63.1.



the enforcement of social and environmental management strategies is weak due to unclear policy direction, lack of institutional capacity and awareness in the enforcement agencies and monitoring”.<sup>339</sup>

The legislation reviewed does not make any mention of determined allowed population densities and thus does not include any legal provisions that require the consideration of existing and planned transport infrastructure corresponding to determined allowed population densities. However, the **Malawi National Transport Policy** acknowledges but does not regulate the consideration of existing and planned transport infrastructure, stating that “[t]he growth in urban population and numbers of vehicles, combined with poor public transport services and traffic management, is leading to congestion in the major urban centres”.<sup>340</sup> The **National Urban Policy** is the only reviewed document which assigns specific administrative responsibility for managing existing and planned transport infrastructure with concrete goals that the competent administrative entity will work towards. It states that “[t]he role of the Ministry responsible for transport and public works shall be to [d]evelop a coordinated and efficient urban transport infrastructure, [i]nitiate reduced urban transport costs and prices across all modes, [i]mprove the safety, security and resilience of urban transport infrastructure and services, [and] [d]evelop appropriate building regulations and an enforcement strategy”.<sup>341</sup> While these policies do not explicitly link existing and planned transport infrastructure to population density, they commit the Government to considering the mobility needs of the country’s rapidly growing urban population with future growth in mind.

339 National Buildings Policy (2018). Section 1.2.9 (1).

340 National Transport Policy. Section 1.2.1 (6)

341 Malawi National Urban Policy (2019). Section 4.1.11.

### 4.3 GREEN SPACES FOR ENVIRONMENTAL AND CLIMATE SERVICES

The promotion of green spaces is an essential element of climate change mitigation in the urban context as the carbon absorption capacity of vegetation can significantly reduce the carbon footprint of urban communities. In Malawi, however, few legal provisions are made for the establishment of adequately distributed urban green spaces.

The **Environment Management Act** does not require that green spaces to be designed or that land be set aside for the development of green spaces, but it does allow for an environmental conservation order to be imposed on land to preserve fauna and flora and scenic views or open space.<sup>342</sup> The **National Urban Policy** seeks to “promote the creation of public amenities including open spaces and parks”.<sup>343</sup> The **National Climate Change Management Policy** encourages the promotion of vegetation and tree cover.<sup>344</sup> The **Malawi Vision 2063** provides that green city spaces, that is parks, sports fields and vegetation, shall be a key element of integrated urban planning, providing spaces for physical activity, relaxation, peace and stress reduction, thereby boosting the urban population’s mental and physical health. However, there are no provisions in law or policy requiring the joint planning of networks of green areas and water bodies, such as Lake Malawi.

342 Environment Management Act (2017). Section 74 (4).

343 National Urban Policy (2019). Section 3.3.1.

344 Malawi National Climate Change Management Policy (2016). Chapter 2.1.1.

## 4.4 NEIGHBOURHOOD DESIGN AND ENERGY SAVING IN BUILDINGS

There are limited legal and policy provisions in Malawi which require neighbourhood design that achieves energy savings in buildings. While legal provisions regarding the design of energy saving in buildings at the neighbourhood and local level are lacking, national policy commits to energy saving at large. The **National Urban Policy** states that the ministry responsible for environmental affairs shall “promote energy-saving and clean technologies”<sup>345</sup> and “promote [the] provision of sufficient energy and other services to meet the increasing demands in urban centres”. However, these commitments are not specifically linked to building standards.

One way energy savings in buildings could be promoted is by orienting buildings or the layout of the streets to consider wind and sun direction. To date, no regulations exist regarding building and sun orientation. The ideal orientation would optimize sunlight to illuminate the space indoors while providing shade from the direct sun to avoid indoor overheating. In terms of wind direction, the Safer House Construction Guidelines provide specifications for housing construction and site selection based on wind considerations. These guidelines aim to minimize the impact of natural hazards and disasters, and mitigate damage caused by natural disasters, such as fire, flood and windstorms. Specifically, the guidelines encourage buildings to be six metres apart in urban areas and 10 metres apart in rural areas (depending on the applicable by-laws).<sup>346</sup> The **National Climate Change Management Policy** promotes adopting a “climate compatible development approach when planning for energy infrastructure needs and to aim for low carbon

solutions, including reducing overdependence on biomass-based energy”.<sup>347</sup>

Requirements relating to the thermal properties of urban surfaces provide another way to improve neighbourhood design for energy efficiency. However, there are no provisions that require consideration of the thermal properties of urban surfaces in Malawi. The draft reviewed **National Building Policy** is explicit about the importance of climate change considerations in the construction sector, while the Building Bill proposes a focus on requiring, when appropriate, building energy efficiency.

Lastly, provisions should also be made to require plot design that achieves optimal building orientation for the purpose of energy-saving in buildings. This is an action local councils can take through planning bylaws and building standards to ensure that the positioning of buildings is linked to optimal light and wind orientation.

It is clear from the **National Urban Policy** and the **Climate Change Management Policy** that Malawi values energy-saving techniques, however further regulatory specifications need to be made to ensure there is a cohesive approach to effective energy-saving practices in urban planning and land management.

## 4.5 DEVELOPMENT APPROVAL AND MITIGATION

Legislative or regulatory provisions should exist to ensure that planning and designs standards that mitigate the emissions of greenhouse gas are enforced through the development approval process. However, there are limited provisions which link development approval to planning

345 Malawi National Urban Policy (2019). Section 4.1.8 (iii).

346 Safer House Construction Guidelines, Section e.

347 Malawi National Climate Change Management Policy (2016). Climate change adaptation.

and design standards which mitigate emissions. This is partly due to the scarcity of low-carbon planning and design legal standards in Malawi.

The **Environment Management Act** empowers the Environment Protection Authority to commission national studies on activities, practices or substances that cause climate change and to develop the necessary policy and legislation for effective control, management and monitoring of such activities, practices and or substances.<sup>348</sup> Moreover, the guidelines issued by the Environment Protection Authority regarding measures for the control and management of factors affecting climate change must be respected by public and private actors alike.

Legal and policy provisions exist to allow local governments to charge developers for infrastructure costs associated with their developments. The **National Land Policy** proposes an “environmental impact fee” collected by the planning and environmental management department of a local government to pay for anticipated impacts of development. Thus, local governments can use the impact fee to mitigate undesired impacts of certain developments.<sup>349</sup> The **Guidebook on the Local Government System** in Malawi describes locally generated revenues and indicates that “these revenues include property rates, ground rent, fees and licences, service charges and commercial undertakings”.<sup>350</sup> Similarly, the **National Housing Policy** seeks to “support and enable local authorities’ tasks in revenue collection, user’s charges and fees collection as part of resource mobilization in support of housing

policy implementation”,<sup>351</sup> referring to provisions regarding the Ministry of Local Government and Rural Development to charge developers. The **Physical Planning Act** includes provisions allowing the competent governmental authority to charge developers for the infrastructure costs associated with the proposed development through conditions attached to the approval of development permission applications. The Act states that an authority responsible deciding to grant a development permission may impose a condition of a “contribution, including financial contribution, which a developer will be required to make [for] the provision of infrastructure and car-parking in connection with the development.”<sup>352</sup>

Regarding provisions which require monitoring compliance with the approved development and its conditions, the **Environment Management Act** specifies that inspectors have the right to monitor “the effects on the environment of any activities carried out on that land or premises and to enforce compliance with the environmental mitigation and management plans”.<sup>353</sup> Likewise, the **National Planning Commission Act** mandates the National Planning Commission to develop long- and medium-term development plans and to supervise the implementation of these plans.

## RECOMMENDATIONS

### Urban plans and greenhouse gas emissions:

- The **Physical Planning Act** and/or the **Environment Management Act**, or their respective by-laws, should include provisions that require the assessment of greenhouse gas emissions associated with existing urban form and an estimation of existing

348 Malawi National Climate Change Management Policy (2016), Section 54(3).

349 National Land Policy of 2002, Annex A

350 Guidebook on the Local Government System in Malawi, Chapter Nine, Section 1(i).

351 Malawi National Housing Policy (2019), Policy 4.1.3.

352 Physical Planning Act (2016), Section 50.3 (b).

353 Malawi Environment Management Act (2017), Section 4.1.3.

carbon sinks; and require the production of different planning scenarios with the estimated greenhouse gas emissions and carbon sink potential associated with each scenario. If not legally required, this exercise is a best practice which should be adopted by the competent planning authorities.

- Capacity building should be undertaken as needed to support the assessment of greenhouse gas emissions and carbon sink potential of local and district physical development plans.
- Policy has begun to include provisions to measure greenhouse gas emissions; establishing greenhouse gas emissions limits at the local and district levels can help in setting realistic emissions goals tied to local or district physical development plans.
- It is critical that the greenhouse gas emissions of local and district physical development plans are assessed, and that this information is made publicly available with the plan during the public review process of plan preparation.

#### **Urban form and reduction of greenhouse gas emissions from transport and infrastructure:**

- Based on the current provisions that exist surrounding street design and walkable landscapes, it is recommended that the local governments develop planning bylaws with respect to plot size and configuration and street design to promote walkability and connectivity.
- The **National Urban Policy** states that “promoting regular research on urban issues” and supporting “research in urban planning” are matters of national policy

priority.<sup>354</sup> Part of this urban research effort should be to explore avenues to promote mixed land use in the context of a country struggling to meet the basic needs of urban dwellers in the face of increasingly rapid urbanization. While working to ensure that the growing influx of people to urban areas is met with adequate growth in jobs, housing and public services, it is also possible to promote best practices in urban and environmental planning, e.g., mixed land use.

- It is recommended that the planning legislation explicitly require optimal urban density to be a primary concern in further urban development, and especially in the context of urban redevelopment. While the Government has made policy commitments to achieving optimal density within urban areas, there is insufficient legal support for this policy objective
- It is recommended that the Government assigns specific responsibility for determining allowed population densities in urban areas to a specific administrative entity at the national, district and local levels of governance. These population density standards should be connected to legal provisions ensuring the current and future accessibility of jobs, housing, public services, transport and other infrastructure. Without determining allowed population densities, efforts to combat rapid urbanization will be significantly hindered.

#### **Green spaces for environmental and climate services:**

- It is recommended that the Government

<sup>354</sup> Malawi National Urban Policy (2019). Sections 3.4.1 (ii), 4.1.2 (vii).

consider implementing a policy requiring green spaces throughout metropolitan areas, for aesthetic, recreational, public health and climate change mitigation-related purposes.

- These green spaces should be distributed throughout cities, in both lower-income and wealthier neighbourhoods.
- Urban green spaces should be connected by accessible routes to bodies of water, such as Lake Malawi, enabling full recreational use of the natural environment.

### **Neighbourhood design and energy saving in buildings:**

- Statutory by-laws, guidelines and local building regulations should address neighbourhood design and energy saving in buildings, with attention given to the orientation of streets and plots vis-à-vis sun and wind direction and the thermal properties of urban surfaces.
- These provisions should encourage and support district and urban master plans to include plot designs that allow buildings to achieve optimal sun and wind orientation for energy saving in buildings.

### **Development approval and mitigation:**

- The **Physical Planning Act** and **Environment Management Act** should include provisions explicitly linking design standards which mitigate greenhouse gas emissions to the development approval process.

**See table 5 for a summary of the main laws, regulations, and policies referred to in this chapter.**

**TABLE 5. Referenced legislation and policies (Urban planning and design for mitigation)**

<b>Legislation</b>	<b>Year</b>
Malawi Constitution of 1994	1994
Government of Malawi National Climate Change Policy	2016
Climate Change Implementation, Monitoring and Evaluation Strategy	2016
Environment Management Act Chapter 60:02	2017
Environment Management Act No. 19	2017
Malawi Growth and Development Strategy III - Building a Productive, Competitive and Resilient Nation	2017
Environmental Management (Climate Change Fund) Regulations	2018
Safer House Construction Guidelines	2010
Buildings Bill	2020
Physical Planning Act	2016
Customary Land Act	2016
Land Survey Act	2016
<b>Policy</b>	<b>Year</b>
National Buildings Policy	2021
Malawi National Housing Policy	2019
Malawi Vision 2063	2020

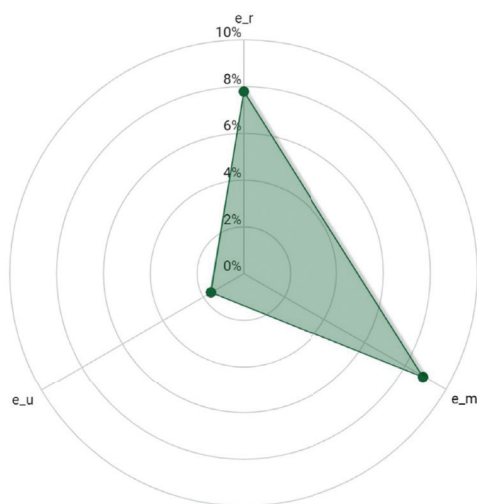


Crops submerged in flood water in Lower Shire, Malawi. by George Ntonya/UNDP source: flickr

## CHAPTER 5.

# ECONOMIC AND NON-ECONOMIC INSTRUMENTS FOR CLIMATE-FRIENDLY URBAN PLANNING

## EXECUTIVE SUMMARY



### Economic & Financial Instruments

e_r	Resources for Urban Planning and Climate Change
e_m	Incentives for Mitigation and Adaptation in Urban Planning
e_u	Incentives that Promote Unsustainable Urban Land Uses

**Figure 8: Rating matrix for Malawi on Economic and Non-Economic instruments for Climate-Friendly Urban Planning**

Effective climate change action in urban areas requires local governments to be adequately financed to undertake their functions. Though the legal framework in Malawi lacks provisions which require earmarked intergovernmental fiscal transfers to local governments for climate change mitigation and adaptation in urban planning, other legal and regulatory provisions can create a flow of resources to finance climate change mitigation and adaptation in urban planning. In the Constitution, and the **Local Government Act**, local governments are given the responsibility to collect and decide how to spend locally generated revenues. The

**Environment Management Act** and **Land Act** empower local government authorities to collect and spend revenue in order to finance the actions required in the respective pieces of legislation, which include climate change adaptation and mitigation measures. However, the law does not have legal provisions requiring that local governments earmark resources for urban planning and climate change. The **National Environment Policy** includes the national goal of establishing and managing an “environmental fund generated from sustainable utilization of natural resources and any other sources”, stating that this fund will be used to “facilitate environmental management”. The **National Land Policy** also affirms the commitment to better finance the development of urban areas. While there are no legal provisions geared towards creating enabling environments that facilitate the mobilization of investment capital, many policies express commitments and detail government projects attempting to address this issue. The **National Climate Change Management Policy**, the Malawi Growth and Development Strategy III, and the Environment Management Act all focus on the promotion of public-private partnership arrangements to achieve development projects and programmes and environmental management goals. Finally, the country’s legislative and policy framework does not make any reference to national public credit guarantees for local governments, though other credit systems are mentioned in the **National Land Policy**, the Malawi Growth and Development Strategy III and the **Malawi Vision 2063**.



*Malawi should consider implementing both economic and non-economic incentives to support climate change adaptation in urban planning such as tax breaks for green construction or subsidies for emissions reduction technologies.*

Economic incentives to support climate change mitigation and adaptation in urban planning are provided for in the **National Land Policy**, the **National Climate Change Management Policy**, the **National Environment Policy** and the **Environment Management Act**. These incentives include research grants for climate change mitigation work, fiscal mechanisms on externalities that contribute to climate change, and climate change mitigation funds. The **Environment Management Act** and Malawi Growth and Development Strategy III create incentives for the development and adoption of renewable energy sources. The **Environment Management Act** permits the Minister of Finance to create fiscal incentives to “promote the protection and management of the environment and the conservation and sustainable utilization of natural resources”.<sup>355</sup> Non-economic incentives to support mitigation efforts are mentioned in several national laws and regulations such as the **Customary Land Act** and the **National Building Policy**. For example, the **Customary Land Act** empowers the competent authority to declare land as hazardous, which then prevents any development that poses a

threat to life or leads to land degradation.<sup>356</sup> A goal of the **National Building Policy** is to ensure that “new building technologies are researched and developed and used in the built environment”, through strategies that include coordinating with academia and mobilizing resources to facilitate research and development.<sup>357</sup>

Law and policy in Malawi include few incentives that promote unsustainable land use. Economic incentives that promote unsustainable urban land uses are expressed in the **National Physical Development Plan** (1987) which is in force despite the adoption of policies and promulgation of new urban and territorial planning legislation in recent years. The **National Urban Policy** does not explicitly indicate economic incentives for urban land use, however it seeks to “promote the provision of sufficient energy and other services to meet the increasing demands in urban centres”,<sup>358</sup> which could lead unsustainable energy consumption patterns. The **National Land Policy** acknowledges that “previous land policies neglected to reform the smallholder sector, in particular, the prevailing attitudes encouraged

<sup>356</sup> Customary Land Act (2016). Section 19.1.

<sup>357</sup> National Buildings Policy (2018). Section 3.10.

<sup>358</sup> Malawi National Urban Policy (2019). Section 3.4.1 (vi).

<sup>355</sup> Environment Management Act (1996), Section 31(a).

degradation and a rejection of traditional land resource management ethos in many rural communities”.

## 5.1 RESOURCES FOR URBAN PLANNING AND CLIMATE CHANGE

Malawi’s legal and policy framework has limited provisions for allocating financial resources to foster the integration of climate change adaptation and mitigation in urban plans. Specifically, there are no provisions which establish intergovernmental fiscal transfers to local governments earmarked for addressing climate change mitigation and adaptation in urban planning. However, financial resources are provided for in other ways under the law.

The Constitution authorizes local government authorities to collect revenue in the form of a tax, rate, duty, levy or imposition if legally enabled.<sup>359</sup> The **Local Government Act** enables local councils to collect locally generated revenues<sup>360</sup> and to decide how to spend this revenue.<sup>361</sup> The Act also states that “[t]he council shall have power to create such special funds as it may deem necessary”.<sup>362</sup> Climate change mitigation and adaptation are not specifically mentioned in the **Local Government Act**, but through this enabling power, any local council may decide to dedicate funds to integrate climate change mitigation and adaptation into their urban plans.

The **Environment Management Act** empowers local government authorities to collect and spend revenue in order to finance the actions required in the **Environment Management Act**.<sup>363</sup> The **Land Act** endows local government with

this same power.<sup>364</sup> The Guidebook on Local Government states that local governments are authorized to collect locally generated revenues and that government transparency is required in communicating to residents how these revenues are spent.<sup>365</sup> However, the guidebook does not stipulate any requirements for expenditures on climate change mitigation or adaptation.

The **Malawi Vision 2063** includes goals to both enhance the capacity of local governments to collect revenue and to develop economic projects that support the urbanization goals outlined in the Malawi Vision 2063.<sup>366</sup> Some of the urbanization goals in Malawi Vision 2063 acknowledge the need to mitigate and adapt to risks posed by climate change; as a consequence the revenue collection and spending goals foreseen in the Malawi vision 2063 empower local governments to incorporate climate change mitigation and adaptation into their urban plans.

The **National Environment Policy** has sections which address revenues from the Malawi National Parks and Malawi Tourism. The section on national parks indicates that “there shall be a fair distribution of the benefits and revenue from sustainable utilization of wildlife resources between central Government, local authorities and local communities”.<sup>367</sup> Although climate change mitigation and adaptation are not explicitly mentioned, local governments are clearly provided with revenue and benefits from sustainable natural resource management. Local governments may choose how to use the funds and, as such, they may elect to further enable sustainable natural resource management.

### The Tourism section of the **National Environment**

359 Malawi Constitution of 1994 (Amendments to 2017).

Chapter XVIII, Section 171.

360 Malawi Local Government Act (1998). Sections 44 and 46.

361 Ibid., Sections 46 (2) and 109 (5).

362 Malawi Local Government Act (1998). Section 46 (2)

363 Environment Management Act (2017). Section 86 (1).

364 Malawi Land Act (2016). Section 35 (1)

365 Guidebook on the Local Government System in Malawi, Chapter 9, Section 1(i).

366 Malawi Vision 2063, Pillar 3: Urbanization.

367 National Environment Policy (2004). Section 5.4 (b).

**Policy** includes more rigorous revenue spending provisions. The policy indicates that “local communities shall participate in the management and share revenues of ecotourism in order to enhance environmental sustainability”.<sup>368</sup> The policy further states that “government departments and local communities shall have the right to revenue generated from sustainable utilization of natural resources on public and customary lands in order to provide positive incentives and self-finance for such continued use”.<sup>369</sup> These provisions support the Government’s environmental sustainability objectives. Requiring that some of the revenue from national parks or tourism be used for climate change mitigation and adaptation will also help Malawi in its climate change objectives.

The legal framework in Malawi does not contain legal provisions requiring that local governments earmark resources for urban planning and climate change. However, the **Physical Planning Act** requires local governments to prepare district physical development plans and local physical development plans using their own financial resources. As such, the implementation of these provisions requires that a portion of locally sourced revenues are earmarked for urban planning at the district and local levels.

The above provisions do not link climate change to resource allocation for district and local-level planning. Despite the lack of explicit legal provisions on this issue, several government policies contain a formal national commitment to a more decentralized allocation of resources for urban planning with climate change in mind. In the Guidebook on the Local Government System in Malawi, the use of the term “resources” is broad, but resource allocation is discussed

primarily in the context of urban planning. The guidebook recognizes that “attainment of sustainable development can only be achieved through [the] devolution of certain responsibilities to local authorities”, and discusses how the local government system allows local communities to harmonize and exercise agency within their socioeconomic development efforts.<sup>370</sup> For example, if a local community has abundant food production but cannot sell its surplus due to lack of accessibility to the nearest market, it can prioritize building rural feeder roads in its local physical development plans. Meanwhile, a different community in the same district which is more prone to erratic rainfall can prioritize small-scale irrigation within its local physical development plans since local governments “have the task of deciding how to mobilize resources to ensure that the plan is implemented”.<sup>371</sup>

Some of these policies contain much broader commitments to resource allocation for urban planning with respect to climate change, or to urban resilience in the face of worsening risk due to climate change. **The National Environment Policy** includes the goal of establishing and managing an “Environmental Fund generated from [the] sustainable utilization of natural resources and any other sources,” and states that this fund will be used to “facilitate environmental management”.<sup>372</sup> However, the level of governance at which these natural resources and other sources will be assessed, regulated and distributed is not specified in the policy. Similarly, the **National Urban Policy** states that a priority goal is to ensure that “[u]rban areas are resilient to impacts of climate

368 Ibid., Section 5.9 (b).  
369 Ibid., Section 5.9 (f).

370 Guidebook on the Local Government System in Malawi (October 2013). 1.4  
371  
372 National Environment Policy (2004). Section 3.2.8.

change, disasters and other shocks”, but the policy does not include strategies related to earmarking funds for climate change adaptation or mitigation. The **National Land Policy** affirms a national commitment to better financing the development of urban areas. It states that “[l]and-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.”<sup>373</sup>

Several laws and policies indicate that the Government is aware of the need for careful resource allocation for urban planning as a method to combat climate change risks. The **Malawi Vision 2063** contains measures and resources for mitigating climate change through urban planning in Enabler 6, stating that the country shall develop systems to break cycles of environmental degradation, including the “integration of disaster risk reduction and financing into sustainable development and planning, as well as the promotion of climate change adaptation, mitigation, technology transfer and capacity building for sustainable livelihoods through Green Economy measures”.<sup>374</sup> While this is hopeful for the future of Malawi, the absence of a cohesive legal framework informed by these policy commitments makes their translation into effective implementation uncertain.

While there are no legal provisions geared towards creating enabling environments that facilitate the mobilization of investment capital, many national policies express commitments and detail government projects attempting to address this issue. **The National Climate Change Management Policy** and its Implementation,

373 Malawi National Land Policy (2002), Section 6.5.1 (b).

374 Malawi Vision 2063 (2020), Section 4.6.

Monitoring, and Evaluation Strategy set an objective to provide “incentives to encourage private sector investment” through mechanisms such as tax cuts. The **Malawi Growth and Development Strategy III** gives slightly more specific strategies for encouraging investment in Section 5.2, which addresses fiscal policy related to climate change, affirming that “investment expenditure will increase in the flagship projects identified in the priority areas”.<sup>375</sup> The strategy elaborates that public-private partnership arrangements will be useful in promoting the financing of “flagship projects”, though the country’s focus will be taking on project feasibility studies to create an easy uptake environment for investors, i.e., “developing bankable projects”.<sup>376</sup> The Malawi Growth and Development Strategy III additionally reports that the Government is actively working on reducing interest rates to induce higher levels of investment as part of its national monetary policy.<sup>377</sup>

Policies in the housing and infrastructure sectors contain similarly well-developed frameworks which aim to enable the mobilization of investment capital. Part of the **National Building Policy**’s purpose is “encouraging private sector participation through investment in the provision and operation of building infrastructure and services”, in addition to “[e]nsuring that environmental sustainability is enshrined in the policy, planning, operations and general management of the buildings sector”.<sup>378</sup> Section 4.1.9 of the policy focuses on housing finance institutions, acknowledging that financial institutions such as “[c]ommercial banks,

375 Malawi Growth and Development Strategy III, (2017), Section 5.2.

376 Ibid, Section 5.1.4.

377 Malawi Growth and Development Strategy III, (2017), Section 5.3.

378 National Buildings Policy (2018), Section 1.6 (iv) and (vi).

loans and credit institutions and other financial institutions foster the supply and demand of housing delivery". The policy requires these financial institutions to provide housing finance to individuals wishing to build or purchase homes or plots and provide finance for housing-related infrastructure at reasonable rates. It additionally requires these institutions to secure savings and loans that will boost housing sector development; establish mechanisms introducing suitable guarantee schemes through which loans can be made in segments of the market perceived as high risk; and promote specially designed loans and credit that match the building process of the majority of people.<sup>379</sup> In tandem, a priority of the **National Construction Industry Policy** is to "[p]rovide for the establishment of working capital and guarantees on easier terms than traditional banks to contractors".<sup>380</sup> As opposed to other provisions mentioned, both this policy and the **National Building Policy** focus on creating enabling environments for the average person to access investment capital. Boosting development by strengthening the capacity of the average person, consequently the capacity of the people as a whole, to invest capital in physical development is clearly a government priority.

At a national level, the Government's desire to "develop and implement resource mobilization efforts that will enable the country to create its own wealth and only borrow for investments with high economic returns" is expressed in the **Malawi Vision 2063** and is clearly reflected and expanded on in the aforementioned policies. However, as policies, these documents do not have legal force and the commitments they make should be translated into provisions of law to legitimize these efforts to create and sustain investment capital in Malawi. Under

379 Malawi National Housing Policy (2019). Section 4.1.9.

380 National Construction Industry Policy (2015). Section 3.2.

Pillar 1 of the Vision 2063, it is highlighted that climate smart technologies and practices in the sector will be promoted and given priority by recognizing that increasingly variable and adverse climatic conditions continue to affect the country's rain-fed agriculture system. Broad investment in sustainable irrigation systems and technologies as well as approaches to mitigating the effects of adverse climatic variability will be prioritized. New technologies and expertise will be required to ensure sustained and resilient productivity in agricultural production. Affordable and consumer-oriented agricultural insurance for smallholder farmers will also be scaled up. The Malawi Vision 2063 underscores the importance of investment in every aspect of its strategy. However, none of the enablers stated in the document explicitly connect climate change to efforts to garner funding for sustainable development; instead they use language referencing "the environment", or "sustainable use" which is not synonymous with climate change mitigation or adaptation.

Malawi's legislation and policy framework does not make any reference to national public credit guarantees for local governments, though other credit systems are mentioned in the **National Land Policy**, the Malawi Growth and Development Strategy III and the Malawi Vision 2063. To support the title registry system for recording customary land rights, the **National Land Policy** mandates that "registration of title to customary estates shall be cost-effective and encouraged by establishing a revolving credit finance system" meant to bring the cost of the procedure within the means of the majority of people.<sup>381</sup> Interestingly, the already-discussed financial accessibility objectives outlined in the Malawi Growth and Development Strategy III are pertinent in this respect, especially the language

381 Malawi National Land Policy (2002). Section 8.3.2 (d).



Baboon and local woman at Lake Malawi by Charles Steinfield source : flickr

in Section 5.3, which describes general efforts to reduce interest rates and induce higher levels of investment in a “capital market (both debt and equity) [that] remain[s] underdeveloped”. The strategy goes on to explain that the savings-investments gap is too wide, meaning most deposits are not long-term investments due to high inflation and interest rates.<sup>382</sup> Public credit guarantees are an under-used strategy in Malawi, though one with great potential for creating positive feedback loops in development investment given the financial situation described in government policy.

Public-private partnerships are mentioned relatively frequently in the country’s legislation, several pieces of which contain legal provisions outlining mandated frameworks for such

382 Malawi Growth and Development Strategy III (2017). Section 5.3.

partnerships. The **National Climate Change Management Policy** is the only reviewed document that explicitly commits the Government to establishing public-private partnerships for purposes related to climate change adaptation. It states that increasing the “number of public-private partnerships for climate responsible development” is a policy priority and that the strategy for this will provide “incentives for public-private partnerships in clean development and new market mechanisms such as renewable energy technologies and eco-tourism”.<sup>383</sup> Some laws address such partnerships in the context of environmental sustainability rather than climate change. The **Environment Management Act** identifies preparing plans and strategies for environmental protection, conservation

383 National Climate Change Management Policy (2016). Section 2.6.4 (i).

and sustainable use of natural resources in addition to facilitating “co-operation between the Government, local authorities, private sector and the public” as being the responsibility of the **Malawi Environment Protection Authority**.<sup>384</sup> Section 8.2(c) of the **Environment Management Act** similarly delegates the responsibility for public-private partnerships to the national level of governance. It is the responsibility of the minister to prepare plans and strategies facilitating “cooperation between the Government, local authorities, the private sector and the public in the protection and management of the environment and the conservation and sustainable utilization of natural resources”.

Several other policies explicitly commit the Government to forming public-private partnerships in various scenarios related to the development and resilience of Malawi in a period of growth and change, but not with respect to the environment or climate change. The Malawi Growth and Development Strategy III has an entire section on public-private partnerships financing, which states that promoting financing for flagship projects through such partnerships will be part of the overarching growth strategy moving forward, but the first priority is to increase investment however possible.<sup>385</sup> The **National Environment Policy** states that developing institutional linkages coordinating efforts between line ministries, local government authorities, local communities, the private sector, the NGO community and international and bilateral partners is a priority for the Government moving forward.<sup>386</sup> The **National Policy on Equalization of Opportunities for Persons with Disabilities**

states that the Ministry of Economic Planning and Development will “liaise with cooperating partners for financial and technical support” in accomplishing its goals.<sup>387</sup> The Guidebook on the Local Government System in Malawi further supports public-private partnerships by communicating the Government’s plan to develop global NGO partnerships to aid local development efforts.<sup>388</sup> The **National Urban Policy** bolsters these commitments and states that the Government at various levels will work to “[p]romote and strengthen public-private partnerships in urban development”.<sup>389</sup> All sections of the policy state that the Government will promote such partnerships in all referenced industries, but there is no mention of how this will be accomplished or which government agencies will be responsible for the partnerships. However, with all this commitment to public-private partnerships, none of the legal provisions or policy statements cited explicitly state that these partnerships will be used as an economic tool for climate-change-conscious urban planning.

## 5.2 INCENTIVES FOR MITIGATION AND ADAPTATION IN URBAN PLANNING

The **National Land Policy**, **National Climate Change Management Policy**, **National Environment Policy** and **Environment Management Act** all include economic incentives to support climate change mitigation and adaptation in urban planning. The **National Climate Change Management Policy** describes various economic incentives, including research grants for climate change mitigation work, “fiscal mechanisms on externalities that contribute to climate change” and “climate change mitigation

384 Environment Management Act (2017). Section 9.2 (e).

385 Malawi Growth and Development Strategy III (2017). Section 5.1.4.

386 National Environment Policy (2004). Section 4.1.1.4.

387 National Policy on Equalization (2006). Section 5.2.1.6.

388 Guidebook on the Local Government System in Malawi (2013). Section 1.4.

389 Malawi National Urban Policy (2019). Section 3.8.1.

funds such as market mechanisms to foster opportunities that safeguard investments”. The **National Environment Policy** includes provisions to grant land concessions on a competitive basis to promote the privatization of forestry plantations in line with the country’s goal to sustainably manage forestry resources.<sup>390</sup> The **Environment Management Act** creates incentives for the development and adoption of renewable energy sources.<sup>391</sup> Moreover, the Malawi Growth and Development Strategy III mentions providing “incentives for [the] adoption of cleaner technologies”, however it does not further describe these incentives or clarify if these incentives will be of an economic or non-economic nature.<sup>392</sup>

A goal of the **National Urban Policy** is to “establish incentives for more sustainable practices”.<sup>393</sup> In addition, the **Environment Management Act** permits the Minister of Finance to create fiscal incentives to “promote the protection and management of the environment and the conservation and sustainable utilization of natural resources”.<sup>394</sup> Similarly, the **National Climate Change Management Policy** states that it intends to “promote research, research innovation and technological innovation for mitigation and adaptation [...] promote access to research grants [...] and undertake research in climate change adaptation and mitigation, including indigenous knowledge”.<sup>395</sup> The Malawi Growth and Development Strategy III in Annex 2 supports the priority to “mobilize resources for climate change research and technology” as part of the goal to enhance climate change research

and technology development”.<sup>396</sup> Additionally, the **National Building Policy** includes a goal to ensure that “new building technologies are researched and developed and used in the built environment” through strategies that include coordinating with academia and mobilizing resources to facilitate research and development.<sup>397</sup>

While there are numerous provisions that provide economic incentives to support climate change mitigation, specific non-economic incentives to support mitigation efforts are also mentioned in several national laws and regulations. The **Customary Land Act** empowers the competent authority to declare land as hazardous, which then prevents any development on that land where it poses a threat to life or leads to land degradation.<sup>398</sup> The **National Building Policy** aims to “promote the use of eco-friendly materials” and “mainstream green energy design”, but does not specify what types of incentives will be used to promote and standardize such measures.<sup>399</sup> Moreover, while the **National Meteorological Policy** does not mention climate change mitigation specifically, Section 3.6.4 of the policy outlines strategies for increasing funding for climate change and the meteorological sector to further contribute to climate action.<sup>400</sup>

### 5.3 INCENTIVES THAT PROMOTE UNSUSTAINABLE URBAN LAND USES

Economic incentives that promote unsustainable urban land uses are expressed in the **National Physical Development Plan** (1987) which remains in force despite the adoption of policies and promulgation of new urban and

390 National Environment Policy (2004). Section 5.2.

391 Environment Management Act (2017). Section 52 (b).

392 Malawi Growth and Development Strategy III.

393 National Urban Policy (2019). Section 1.5.

394 Environment Management Act (2014), Section 31 (a).

395 Malawi National Climate Change Management Policy (2016). Section 2.4.4.

396 Malawi Growth and Development Strategy III (2017). Annex 2.

397 National Buildings Policy (2018). Section 3.10.

398 Customary Land Act (2016). Section 19.1.

399 National Buildings Policy.

400 National Meteorological Policy. Section 3.6.4 (b) and (c).



territorial planning legislation in recent years. According to Section 3.4.3 and Table 3.4.7, economic incentives are proposed for the land-intensive development of hotels and other forms of accommodations in response to increased tourism in Malawi, particularly along the biologically rich shores of Lake Malawi. Likewise, though the **National Urban Policy** does not directly establish economic incentives for urban land use; however, it aims to “promote the provision of sufficient energy and other services to meet the increasing demands in urban centres”,<sup>401</sup> which could lead to more energy consumption and greater reliance on non-renewable energy sources. The guiding principles in the **National Land Policy** suggest that the “correlation between ineffective land policy and poverty also negatively impairs land resource management practices throughout the country”.<sup>402</sup> Finally, the **National Land Policy** acknowledges that “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”.

## RECOMMENDATIONS

### Resources for urban planning and climate change

- While there are legal provisions mandating that district and local-level development plans consider the local resource allocation available for plan implementation, these provisions do not explicitly link to climate change mitigation and adaptation. They should be amended to explicitly earmark resources for planning developments with climate change risks in mind.

401 Malawi National Urban Policy (2019). Section 3.4.1. (vi).

402 National Land Policy (2002). Section 1.3.4.

- General municipal tax collection and compliance is relatively low and this creates challenges for municipal service delivery. It is recommended that municipal tax collection efforts be reinforced and capacity development measures be taken to improve tax compliance.
- It is recommended that the Government establishes public credit guarantee programmes and expands any existing such programmes to environmental protection efforts. New public credit guarantee programmes should be geared towards helping to finance urban development efforts explicitly linked to climate change adaptation and mitigation.
- Existing legal and policy frameworks regarding public-private partnerships should be explicitly tied to climate change mitigation and adaptation within urban development. There is clearly strong government commitment to establishing such partnerships generally, but most of the legislation supporting this is contained in policy statements. A strong legal framework should be developed to regulate public-private partnerships and should accompany these policy statements, which can aid climate change mitigation and adaptation in urban development.

### Incentives for mitigation and adaptation in urban planning

- It is recommended that the Government considers implementing both economic and non-economic incentives to support climate change adaptation in urban planning. These could range from tax breaks for green construction or subsidies for emissions reduction technologies, to a

“mayoral council on climate change seal of approval” or other such designators for climate-compliant businesses

### **Incentives that promote unsustainable land use**

- The country’s policies and laws do not have many incentives for unsustainable land use, which contributes to a sustainable response to climate change. The legal and policy framework regulating urban and environmental issues could build on this by also identify and prohibiting economic or non-economic factors that may stimulate unsustainability.

**See table 6 for a summary of the main laws, regulations, and policies referred to in this chapter.**

**TABLE 6. Referenced legislation and policies (Economic and non-economic incentives for climate-friendly urban planning)**

<b>Legislation</b>	<b>Year</b>
Malawi Constitution of 1994 (Amendments to 2017)	1994
Environment Management Act Chapter 60:02	2017
Environment Management Act No. 19	2017
Malawi Growth and Development Strategy III - Building a Productive, Competitive and Resilient Nation	2017
Environmental Management (Climate Change Fund) Regulations	2018
Safer House Construction Guidelines	2010
Buildings Bill	2020
Physical Planning Act	2016
Customary Land Act	2016
Land Survey Act	2016
National Construction Industry Policy	2019
National Policy on Equalization	2006
Guidebook on the Local Government System in Malawi	
<b>Policy</b>	<b>Year</b>
Malawi National Land Policy	2002
Malawi National Land Policy	2019
Malawi Government National Urban Policy	2002
Government of Malawi National Climate Change Policy	2016
Climate Change Implementation, Monitoring and Evaluation Strategy	2016
National Meteorological Policy	2019
National Buildings Policy	2018
Malawi Vision 2063	2020
Malawi National Housing Policy	2019
National Environment Policy	2004

## PROJECT ON URBAN LAW FOR RESILIENT AND LOW CARBON URBAN DEVELOPMENT IN MALAWI, NAMIBIA, AND ZIMBABWE

### ASSESSMENT OF MALAWI LEGISLATION THROUGH THE URBAN LAW MODULE OF THE LAW AND CLIMATE CHANGE TOOLKIT

Urban areas account for two thirds of greenhouse gas emissions and energy consumption, making them major contributors to climate change. In particular, Malawi cities are already suffering from extreme weather events, flooding, heat waves, water scarcity, among other climate change effects.

Urban law has an important role to play in supporting climate action, increasing cities' resilience and in reducing emissions. Law defines urban forms, where infrastructure and basic services can be built; lays out rules for planning and decision making; and sets the context within which urban authorities, local governments and communities are expected to fulfil their mandate and react to emerging challenges.

UN-Habitat, the Konrad-Adenauer-Stiftung Regional Programme Energy Security and Climate Change in Sub-Saharan Africa (KAS), and the University of Michigan (US), through the project on Urban Law for Resilient and Low Carbon Urban Development, were able to assess the capacity of climate laws and policies in Malawi to adapt to climate change. The assessment was done through the UN-Habitat Urban Law Module of the Law and Climate Change Toolkit – an innovative online tool designed to help countries establish legal frameworks necessary for effective domestic implementation of the Paris Agreement. The assessment was based on the five key performance indicators namely, i) governance framework for urban and climate planning; ii) urban and territorial planning; iii) urban planning and design for adaptation; iv) urban planning and design for mitigation; and v) economic and non-economic instruments for climate friendly urban planning. It is hoped that this assessment will be instrumental in fulfilling the potential of urban areas in Malawi to lead the way and be truly transformative spaces for climate action.

HS Number: HS/042/22E



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